

proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the city of Chicago. The specific maps under consideration are the noise exposure maps: Existing (1988) Noise Exposure Map, Exhibit E-1 and Future (1993) Noise Exposure Map, Exhibit E-2 (both showing unabated contours), located in Appendix E of the submission. The FAA has determined that these maps for Chicago O'Hare International Airport are in compliance with applicable requirements. This determination is effective on August 7, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part

150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591
Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018
Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 268, Des Plaines Illinois 60018
Department of Aviation, City of Chicago, 20 North Clark Street, Suite 3000, Chicago, Illinois 60602.

Also, copies of the Noise Exposure Map document are available at the following public libraries:

Elmwood Park Public Library, Four Conti Parkway, Elmwood Park, Illinois 60635
Franklin Park Public Library, 10311 Grand Avenue, Franklin Park, Illinois 61031
Glenview Public Library, 1930 Glenview Road, Glenview, Illinois 60025
Eisenhower Public Library, 4652 North Olcott, Harwood Heights, Illinois 60656

Palatine Public Library, 500 North Benton Street, Palatine, Illinois 60067
Park Ridge Public Library, 20 South Prospect Avenue, Park Ridge, Illinois 60068
River Grove Public Library, 8638 West Grand Avenue, River Grove, Illinois 60171
Itasca Community Library, 500 West Irving Park Road, Itasca, Illinois 60143
Lombard Public Library, 110 West Maple Street, Lombard, Illinois 60148
Melrose Park Public Library, 801 North Broadway, Melrose Park, Illinois 60160
Mount Prospect Public Library, 10 South Emerson Street, Mount Prospect, Illinois 60056
Niles Public Library, 6960 Oakton Street, Niles, Illinois 60648
Northlake Public Library, 231 North Wolf Road, Northlake, Illinois 60164
Rolling Meadows Public Library, 3110 Martin Lane, Rolling Meadows, Illinois 60008
Roselle Public Library, 40 South Park Street, Reselle, Illinois 60172
Schaumbury Township Public Library, 32 West Library Lane, Schaumbury, Illinois 60194
Schiller Park Public Library, 4200 Old River Road, Schiller Park, Illinois 60176
Villa Park Public Library, 305 South Ardmore, Villa Park, Illinois 60181
Wood Dale Public Library, 520 South Wood Dale Road, Wood Dale, Illinois 60191.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois on August 7, 1989.

Henry A. Lamberts,
Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-19428 Filed 8-17-89; 8:45 am]

BILLING CODE 4910-13-M

Corrections

Federal Register

Vol. 54, No. 159

Friday, August 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, Opportunity To Request Administrative Review

Correction

In notice document 89-18426 beginning on page 32364 in the issue of Monday, August 7, 1989, make the following correction:

On page 32364, in the third column, in the table, in the second column, the last line should read "02/01/88-07/31/89".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah et al.; Consolidation Decision on Application for Duty-Free Entry of Scientific Instruments

Correction

In notice document 89-17823 appearing on page 31718 in the issue of Tuesday, August 1, 1989, make the following corrections:

1. On page 31718, in the first column, in the last paragraph, the first line should read "Docket Number: 89-028".

2. On the same page, in the second column, in the first complete paragraph, in the sixth line remove "FY", and insert "See Notice at 54 FR 4876, January 31, 1989. Reasons for this Decision:"

3. On the same page, in the same column, in the second complete paragraph, in the 12th line, "(ST)" should read "(STP)".

4. On the same page, in the same column, in the third complete paragraph, in the 9th line remove the period before "for", and in the 11th line, "0.40" should read "0.4".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 227

[Docket No. 90778-9178]

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

Correction

In rule document 89-18302 beginning on page 32085 in the issue of Friday, August 4, 1989, make the following correction:

On page 32085 in the third column, under "EFFECTIVE DATE", the last line should read "August 4, 1989, through April 2, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 81024-9018]

Revision of Patent and Trademark Fees

Correction

In a correction to rule document 89-3486 appearing on page 8053 in the issue of Friday, February 24, 1989, the

corrections to § 1.21 should read as follows:

§ 1.21 [Corrected]

4. On the same page, in the third column, in § 1.21(d), ".00" should read "\$50.00".

5. On the same page, in the same column, in § 1.21(g), "\$15.00" should read "\$0.15".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3624-7]

National Drinking Water Advisory Council; Open Meeting

Correction

In notice document 89-18258 appearing on page 32116 in the issue of Friday, August 4, 1989, make the following correction:

On page 32116, in the third column, in the sixth line, "August 20, 1989" should read "August 30, 1989".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s)

Correction

In notice document 89-18826 beginning on page 33077 in the issue of Friday, August 11, 1989, make the following correction:

On page 33078, in the first column, "Agreement No.: 224-010877-002" should read "Agreement No.: 224-010877-001".

BILLING CODE 1505-01-D

14 CFR Part 1

Friday
August 18, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et al.

Revision of General Operating and Flight
Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 23, 25, 27, 29, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 91, 93, 99, 103, 121, 125, 127, 133, 135, 137, 141

[Docket No. 18334; Amdts. No. 1-36, 21-66, 23-37, 25-68, 27-24, 29-27, 31-5, 33-13, 35-6, 36-18, 43-31, 45-18, 47-24, 61-84, 63-27, 65-34, 71-13, 91-211, 93-56, 99-11, 103-3, 121-206, 125-12, 127-43, 133-10, 135-32, 137-12, 141-11]

RIN 2120-AA13

Revision of General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment reorganizes and realigns the general operating and flight rules to make them more understandable and easier to use. Also, several changes are made to provide more flexibility for certain operations. These changes result from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

EFFECTIVE DATE: This amendment becomes effective on August 18, 1990, except that § 91.203(a)(2) becomes effective September 18, 1989, and remains numbered as § 91.27(a)(2) until August 18, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267-3840 or Edna French (202) 267-8150, Project Development Branch (AFS-850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration (FAA) to revise part 91 of the Federal Aviation Regulations (FAR) to make the regulations simpler and more comprehensible. In response to this petition, on January 11, 1979, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) No. 79-2 (44 FR 4572; January 22, 1979) consisting of a verbatim publication of AOPA's proposal.

The FAA received 106 comments in response to the ANPRM. An

overwhelming majority of the commenters supported the intent of the proposal to reorganize part 91. However, there were numerous problem areas identified by the commenters relating to the proposed changes that were considered substantive.

On November 18, 1980, the FAA formed a part 91 Working Group to analyze the AOPA proposal and comments received on the ANPRM. It was determined that certain technical and administrative problems existed and that it was not feasible to undertake a substantive revision of part 91 at that time. Subsequently, AOPA withdrew its petition. However, review of AOPA's proposal to reorganize and renumber part 91 revealed that many of the changes had merit and could be implemented. The FAA part 91 Working Group concluded that the reorganization and renumbering of part 91 would be the first step to improve the regulation and make it more understandable and easier to use. Consequently, the FAA published NPRM No. 79-2A (46 FR 45256; September 10, 1981), which proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Other proposals were made to delete redundancies and obsolete compliance dates and to make other minor changes.

Notice No. 79-2A did not contain any substantive changes; however, it did inform the public that the FAA considered that notice to be the first step in a regulatory review of part 91 consistent with the objective of Executive Order 12291. With this in mind, the FAA invited additional specific comments to help identify substantive areas to be reviewed and possibly included in subsequent proposals concerning part 91. The notice further stated that the FAA would not take final action concerning the reorganization until substantive changes were proposed and the public had been given an opportunity to comment on those proposals.

The FAA published Notice No. 79-2B (46 FR 60461; December 10, 1981) to extend the comment period for Notice No. 79-2A by 120 days. That notice was issued in response to a petition from the National Business Aircraft Association to allow additional time for commenters to prepare substantive comments.

The FAA received 69 comments in response to Notice No. 79-2A. The majority of these comments favored the proposal and were discussed in Notice No. 79-2C (50 FR 11292; March 20, 1985).

Notice 79-2C proposed four substantive changes in addition to the numerous changes made to reorganize and clarify existing rules. Two of these

changes were made in response to comments received from the public. These changes are as follows:

(1) *Section 91.117.* Allows reciprocating-powered aircraft to be operated at 200 knots in an airport traffic area;

(2) *Section 91.135.* Allows operators desiring authorizations to deviate from positive control area and route segment requirements to utilize a 48-hour oral notification system;

(3) *Section 91.409.* Allows operators of turbine-powered rotorcraft to use an alternate inspection program, such as an FAA-approved inspection program; and

(4) *Sections 91.205, 91.509, and 91.511.* Defines "shore" as it is used in these sections to exclude tidal flats.

Public Comments

Forty-seven comments were received in response to Notice No. 79-2C. A number of commenters recommended regulations that were not proposed in the notice. Because such comments discuss matters which the public has not had an opportunity to consider, they are beyond the scope of the notice and cannot be considered without further notice and public participation. Some of these comments concern proposals that will be considered by the FAA in future rulemaking and, therefore, could be published in a future notice.

There were two areas in particular where several proposals were received that are not within the scope of the notice. First, 11 comments specifically request that balloons be excepted from certain requirements now pertaining to aircraft in general. These comments seek substantive change to the existing regulations not proposed in the notice.

Second, a number of commenters propose substantive changes to the regulations with regard to rotorcraft. Although these comments are not within the scope of this rulemaking, they were considered in the Rotorcraft Regulatory Review Program, Notice No. 5.

Two commenters are opposed to changing masculine references to "airman" to read "he or she." One commenter states that this would keep the text shorter and speed up the reading of the text. The other commenter states that § 1.3(a)(3) already provides that "words importing the masculine gender include the feminine," and the better course would be to refer to the "person," or the "pilot." The FAA agrees with these commenters. Accordingly, references throughout part 91 that use the words "he" or "she" have been changed to refer to the "person," the "pilot," the "crewmember," or the "Administrator."

One commenter writes that the use of "pilot in command" and "PIC" is inconsistent in the proposed rules. The FAA agrees with this commenter and, accordingly, has changed references to "PIC" in §§ 91.123(a) and 91.129(b) to "pilot in command" to make their use consistent throughout part 91.

A commenter suggests that all references to distances expressed in miles should state whether they are statute or nautical miles. The FAA agrees that such references should be clear. Accordingly, references to distance expressed in miles in §§ 91.171(b)(4)(iii) and 91.207(e)(3) are changed by adding the word "nautical" to reflect that the distances are expressed in nautical miles since they reference ground-measured distance. References to visibilities in §§ 91.155(b), 91.167(b)(2)(ii), and 91.303(e) are changed by adding the word "statute" to reflect that visibilities are expressed in statute miles.

Several commenters state that the proposed wording for § 91.1 implies that operations of moored balloons, kites, unmanned rockets, and unmanned free balloons are governed by part 103. This comment has merit and § 91.1 is revised by adding a specific reference to part 101 after the phrase "unmanned free balloons" to make clear that moored balloons, kites, unmanned rockets, and unmanned free balloons operate under part 101.

Another commenter requests clarification of the discussion of § 91.7 in Notice No. 79-2C, where the FAA states that there is no provision for the use of an approved Minimum Equipment List (MEL) in part 91 operations, whereas § 91.213 permits the use of an approved MEL. The FAA points out that at the time Notice No. 79-2C was published, the effective date of current § 91.30 (proposed § 91.213) was stayed indefinitely (44 FR 62884; November 1, 1979). Amendment No. 91-192 (50 FR 51188; December 13, 1985) which took effect on March 13, 1986, terminated the stay.

Section 91.7(b), which was proposed without substantive change from existing § 91.29, provides that a flight should be discontinued when unairworthy mechanical or structural conditions occur. One commenter suggests that this be changed by deleting "mechanical or structural" and making it more general so as to provide for a possible unairworthy electrical system. This suggestion raises a valid point; however, the FAA has determined that the rule should be amended to explicitly reference mechanical, electrical, or structural conditions.

Therefore, § 91.7(b) is amended accordingly.

As suggested by one commenter, § 91.21(a)(1) is amended by deleting reference to a "commercial operator." This revision conforms § 91.21(a)(1) with SFAR 38-2 and part 125 which do not provide for a commercial operator's certificate and, instead, provide for the issuance of either an "air carrier operating certificate" or an "operating certificate."

One commenter states that consideration should be given to better defining "appropriately rated pilot" in § 91.109 and provide a definition. The FAA agrees that the phrase "appropriately rated pilot" should be defined better.

The preamble to Amendment No. 91-36 (32 FR 260; January 11, 1967) states that an "appropriately rated pilot" in § 91.21(b) requires a private pilot certificate with an airplane category rating, a multiengine class rating for a small multiengine land plane, and a type rating for a large airplane or a turbojet-powered airplane (large or small).

Accordingly § 91.109(b)(1) is amended to require that the safety pilot hold at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

One commenter urges the FAA to reinsert the current rule regarding visual descent points (VDPs) (current § 91.116). VDPs are not an integral part of the approach procedure. An aircraft that is not equipped to identify a VDP has the same approach minima as a similar aircraft that is equipped to identify the VDP.

Mandatory use of VDPs is considered inappropriate for a number of reasons:

(1) VDPs that use Distance Measuring Equipment (DME) fixes may, because of displacement factors and/or fix errors, result in descent angles that are either too shallow or too steep for the approach.

(2) A mandatory VDP rule discourages the purchase and use of the very equipment necessary to identify the VDP. This is so because compliance can only be required of those aircraft that are equipped to identify the VDP.

For these reasons, the final rule, like the NPRM, does not include a mandatory VDP requirement.

Notice No. 79-2C proposed that § 91.175(a) read: "Unless otherwise authorized by ATC, when an instrument letdown to a civil airport is necessary, each person operating an aircraft except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in Part 97 of this chapter." The

lead-in clause is changed to read, "Unless otherwise authorized by the Administrator," because ATC does not have the authority to approve a person's noncompliance with this rule.

Several commenters raise objections to proposed § 91.203(a)(2), which would prevent an aircraft from operating outside of the United States under the temporary authority of the pink copy of the Aircraft Registration Application as provided in § 47.31(b). The commenters assert that the proposal is a substantive change and not a clarification of the present rule; and that the FAA should consider the economic impact on the industry, the consumers, and the historical precedence of past practices. These commenters suggest that the FAA withdraw the proposal and acknowledge the pink copy of the application as a temporary certificate of registration.

Another commenter is of the opinion that the FAA has not provided discussion, as required by Executive Order 12291, on the economic impacts that would result from the delay between application for an issuance or denial of the registration certificate, under the proposals, in the NPRM. The commenter maintains that future investment purchases and leases would also be adversely affected. Several commenters also question the regulatory consistency that the FAA claims as the basis for the change.

These comments were responded to in full in a Notice of Legal Opinion issued December 1988 (53 FR 50208; December 14, 1988). That Notice of Legal Opinion stated that the limitation of temporary authority to operate an aircraft without registration to domestic operations (as also provided in new § 91.203(a)(2)) reflects current U.S. law and practice. Concerning the economic impact of this ruling, the FAA in that Notice of Legal Opinion answered:

The aviation community has always been able to transfer ownership and register their aircraft with minimal difficulty. In order to mitigate the potential hardship that could result from grounding an aircraft used in international operations, pending receipt of a registration certificate, the Registry will, upon request, telex a copy of the Certificate of Aircraft Registration to the individual whose name appears on the application as the registered owner of the aircraft. The telex copy is issued after confirmation of the information contained on an Aircraft Registration Application and determination of eligibility for registration. The telex, which reflects critical and verified information resulting from the evaluation by the Registry of an application for aircraft registration, may be used as a temporary Certificate of Aircraft

Registration until the original certificate is forwarded for carriage in the aircraft.

This telex certificate will assist owners who submit an application for aircraft registration and who wish to operate the aircraft as soon as possible in international operations. Since the telex, by its terms, is a form of registration certificate, the aircraft may be operated in international air navigation consistent with Article 29 of the Convention [Convention on International Civil Aviation (61 Stat. 1180; T.I.A.S. 1591; 15 U.N.T.S. 295)]. The Registry will telex this copy within a matter of days—often within 48 hours—to be kept in the aircraft until the original Certificate of Aircraft Registration (AC Form 8050-3) is forwarded to the registered owner.

Accordingly, the FAA has determined that the rule should be amended as proposed, and consistent with the Chief Counsel's legal opinion, to provide explicitly that operations of aircraft outside the United States for which an application for registration has been submitted but a certificate of registration has not been issued are not authorized under the Federal Aviation Regulations.

Several judicial decisions have defined the "shore" as including tidal flats. In some parts of the United States, these tidal flats can extend for several miles and, because of the extreme tides prevalent in these areas, the land may be submerged under as much as 25 to 35 feet of water during periods of high tide. The intent of the rule is to require operators carrying passengers for hire over these areas to equip their aircraft with the necessary flotation gear and pyrotechnic devices. Therefore, "shore," when it is used in §§ 91.205, 91.509, and 91.511, is defined to exclude land areas, such as tidal flats, which are intermittently under water.

An incorrect reference to "§ 91.169" was used in proposed § 91.409(e), which has been corrected to "§ 91.409" in the final rule.

It was pointed out by several commenters that the word "stop" in § 91.605(c)(2) was inadvertently included in the proposal and should be deleted. The commenters are correct, and the final rule has been amended accordingly. Also, the word "if" following the word "distance" in that same sentence has been corrected to read "is."

In addition to the specific changes discussed above, minor changes have been made in the wording of the regulations proposed in Notice No. 72-2C. In § 91.3(b), the word "in-flight" has been inserted to clarify that the deviation authority of § 91.3 applies only to in-flight emergencies which affect the safe completion of the flight.

The original intent of § 91.3 was to allow the pilot in command to deviate from certain regulations in the event of an in-flight emergency. Over time, regulations involving non-flight items were inserted into subparts A and B, while flight-related regulations were inserted in other subparts. Therefore, the word "in-flight" is being added to return the language to its original intent.

Other changes are nonsubstantive in nature. Except for such minor revisions, those parts of the proposal for which there were no comments are adopted as proposed. Finally, all other sections of Part 91 remain unchanged except for renumbering (see the cross-reference lists below).

Several amendments to part 91 adopted since Notice No. 79-2C were published and are reflected in the final rule. Where reference to other sections of this part were set forth in an amendment, the references have been changed to reflect the appropriate sections as used in the final rule. Those required changes published in the Federal Register prior to June 19, 1989 are discussed below.

Amendment No. 91-188, (50 FR 15380; April 17, 1985) amended current § 91.11, which governs the use of alcohol or drugs by any crewmember performing duty during the operation of an aircraft. This amendment took effect on June 17, 1985. Subsequently, Amendment No. 91-194 (51 FR 1229; January 9, 1986) amended § 91.11(c) to impose a requirement for a crewmember to furnish the results of any test that indicates percentage by weight of alcohol in a crewmember's blood. This amendment took effect on April 9, 1986. Proposed § 91.17 has been revised accordingly.

Amendment No. 91-189 (50 FR 31588; August 5, 1985) removed references to "expect approach clearance time" in § 91.127. This amendment took effect on September 4, 1985. Section 91.185 reflects this amendment.

Amendment No. 91-190 (50 FR 45602; November 1, 1985) added a new paragraph (c) to current § 91.24. This amendment took effect on December 2, 1985. This new paragraph required all aircraft equipped with an operable radar beacon transponder be turned on while airborne in controlled airspace. Subsequently, § 91.24(c) was amended by Amendment No. 91-203 (53 FR 23374; June 21, 1988). Proposed § 91.215(c) has been redesignated as paragraph (d) and the changes brought about by Amendment Nos. 91-190 and 91-203 have been incorporated into revised § 91.215(c).

Amendment No. 91-191 (50 FR 46877; November 13, 1985) amended current § 91.14 (proposed § 91.107) by revising

the title and the section to include reference to shoulder harnesses. This amendment took effect on December 12, 1985. Section 91.107 has been revised accordingly. Amendment No. 91-191 also added a new paragraph to current § 91.33 which requires a shoulder harness for specified seats in normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured after December 12, 1986. This paragraph appears as § 91.205(b)(15).

Amendment No. 91-192 (50 FR 51189; December 13, 1985) terminated the suspension of Amendment No. 91-157 (44 FR 43714; July 26, 1979) staying the effective date of current § 91.30. This amendment took effect on March 31, 1986. Subsequently, Amendment No. 206 (53 FR 50195; December 13, 1988) amended § 91.30. Section 91.213 reflects these amendments.

Amendment No. 91-193 (50 FR 51193; December 13, 1985) changed the FAA's description of North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace to coincide with the International Civil Aviation Organization's (ICAO's) description of the NAT MNPS airspace. This has been reflected accordingly in Section 1 of Appendix C of this final rule.

Amendment No. 91-195 (51 FR 31098; September 2, 1986) corrects the reference to the Department of Defense office in current § 91.102 restricting the flight of aircraft near space flight operations. This amendment took effect on September 15, 1986. Section 91.143 reflects this amendment.

Amendment No. 91-196 (51 FR 40692; November 7, 1986) upgraded rotorcraft certification and operational requirements, thus effecting amendments to several FARs. This amendment took effect on January 6, 1987. Current § 91.2 was amended to afford small helicopter operators the opportunity to apply for Category II instrument approach authorization. Proposed § 91.193 has been revised accordingly. Current § 91.23 was amended to reduce the IFR reserve fuel requirement for helicopters from 45 to 30 minutes. Proposed § 91.167 has been amended to reflect this change. Current § 91.116 (proposed § 91.175) was amended to establish a separate takeoff minimum for helicopters under IFR, of one-half mile visibility. Current § 91.171 was amended to include helicopters in the altimeter system and altitude reporting equipment tests and inspection requirements. Proposed § 91.411 has been amended to reflect this change. In order to enable rotorcraft to perform

Category II operations. Amendment No. 91-196 also amended appendix A in part 91 by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears.

Amendment No. 91-197 (52 FR 1836; January 15, 1987) revises the authority citation for part 91 and adds a new paragraph to current § 91.213 which states that a commuter category airplane must have a pilot designated as second in command, unless the airplane has a passenger seating configuration, excluding pilot seats, of nine or less seats, and is type certificated for operations with one pilot. This amendment took effect on February 17, 1987. This rule now appears as § 91.531(a)(3).

Amendment No. 91-198, (52 FR 3391; February 3, 1987) amended current § 91.24(a) and (b) on ATC transponder and altitude reporting equipment and use. This amendment took effect on April 6, 1987. Subsequently, Amendment No. 91-203 (53 FR 23374; June 21, 1988) amended § 91.24(b) and (c) and Amendment No. 91-210 (54 FR 25682; June 16, 1989) revised § 91.24(a). Proposed § 91.215 has been revised accordingly. Amendment No. 91-198 also revised paragraph (b)(2)(iii) of current § 91.90 to allow operations conducted prior to December 1, 1987, in Group II TCAs, to be exempt from the new equipment requirements of current § 91.24. Amendment No. 91-203 (53 FR 23374; June 21, 1988) subsequently revised § 91.90, effective July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) further revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. The rule, covering all amendments to date, appears in this revision as § 91.131.

Amendment No. 91-199, (52 FR 9636; March 25, 1987) amended current § 91.35 by renumbering the paragraphs and adding a new paragraph that requires any operator who has installed approved flight recorders and approved cockpit voice recorders to keep the recorded information for at least 60 days, or longer, if requested by the Administrator or the National Transportation Safety Board. This amendment took effect on May 26, 1987. The amended rule now appears as § 91.609.

Amendment No. 91-200, (52 FR 17277; May 6, 1987) amended current § 91.173 by requiring each registered aircraft owner or operator to keep "preventive maintenance" records as well as maintenance, alteration, and records of the 100-hour annual, progressive, and

other required or approved inspections, as appropriate, for each engine, propeller, rotor, and appliance of an aircraft. This amendment took effect on June 5, 1987. This amended rule now appears as § 91.417(a)(1).

Amendment No. 91-201, (52 FR 20028; May 26, 1987) adds the reference to part 129 to the exception in current § 91.161(b) from the requirements of §§ 91.165, 91.166, 91.171, 91.173, and 91.174 for aircraft maintained in accordance with a continuous maintenance program as provided for in part 129. The amendment took effect on August 25, 1987. This amended rule now appears as § 91.401(b).

Amendment No. 91-202, (52 FR 34102; September 9, 1987 and 52 FR 35234; September 18, 1987) amended current § 91.27 on civil aircraft certification requirements by adding a new paragraph (c) to require that a copy of the form which authorized the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft. This new rule now appears as § 91.203(c). Current § 91.173 on maintenance records was revised by requiring that such records be made available to the Administrator or an authorized representative of the National Transportation Safety Board and when such a fuel tank is installed as set forth in § 91.35 as amended pursuant to part 43, a copy of the FAA Form 337 be kept on board the modified aircraft. This new rule appears as § 91.417(b) and (c). This amendment took effect on December 8, 1987.

Amendment No. 91-203, (53 FR 23374; June 21, 1988, 53 FR 25050; July 1, 1988, and 53 FR 26592; July 14, 1988) amended or revised §§ 91.24 (ATC transponder and altitude reporting equipment and use), 91.88 (Airport radar service areas), and 91.90 (Terminal control areas), and by adding a new appendix D entitled "Airports/Locations Where the Transponder Requirements of § 91.24(b)(5)(ii) Apply," regarding use of transponders with automatic altitude reporting. This amendment took effect on July 21, 1988. Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised § 91.90 in its entirety effective January 12, 1989. Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90 by delaying the effective date of the section for helicopter operations. These rules now appear in this revision as §§ 91.215, 91.130, 91.131, and new appendix D to Part 91, respectively.

Amendment No. 91-204, (53 FR 26145; July 11, 1988) amended current § 91.35 on flight recorders and cockpit voice recorders to require digital flight recorders and voice recorders to be

installed on selected aircraft operated in general aviation. The specifications for such recorders are set forth in a new Appendix E to Part 91 for airplanes and in a new appendix F to Part 91 for helicopters. The amendment is reflected as §§ 91.609(b), (c), (d), and (e), and new appendices E and F to part 91. This amendment becomes effective on October 11, 1991.

Amendment No. 91-205 (53 FR 40323; October 14, 1988) revised the classification and pilot and equipment requirements for conducting operations in terminal control areas (TCA's) by amending § 91.90 to establish a single-class TCA; require the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and, to eliminate the helicopter exception from the minimum equipment requirement. The amendment was effective on January 12, 1989. Subsequently, Amendment No. 91-209 (54 FR 24883; June 9, 1989) amended § 91.90(c)(1) by delaying the application of the section for helicopter operations for one year. Revised § 91.131 covers these amendments.

Amendment No. 91-206 (53 FR 50195; December 13, 1988) amended § 91.30 to permit rotorcraft, nonturbine-powered airplanes, gliders, and lighter-than-air aircraft, for which an approved Master Minimum Equipment List has not been developed, to be operated with inoperative instruments and equipment not essential for the safe operation of the aircraft. The amendment also permits general aviation operators of small rotorcraft, nonturbine-powered small airplanes, gliders, and lighter-than-air aircraft for which a Master Minimum Equipment List has been developed, the option of operating under the minimum equipment list concept, or under other conditions as set forth in the amendment. Amendment No. 91-206 also amended § 91.165 to require that any inoperative instrument or item of equipment permitted to be inoperative under the new amended § 91.30 to be repaired, replaced, removed, or inspected at the next required inspection for the aircraft. These amendments became effective on December 13, 1988 and appear as §§ 91.213 and 91.405 of this revision to part 91.

Amendment No. 91-207 (54 FR 265; January 4, 1989) amended §§ 91.1 and 91.61 to extend the controlled airspace and the applicability of certain air traffic rules to coincide with presidential action to extend the territorial sea of the United States for international purposes, from 3 to 12 nautical miles from the U.S. coast. This amendment became effective

on December 27, 1988. These amended rules now appear as §§ 91.1 and 91.101.

Amendment No. 91-208 (54 FR 950; January 10, 1989) added a new § 91.26 to require that any traffic alert and collision avoidance system installed in a U.S. registered civil aircraft must be approved by the Administrator, and if installed, must be on and operating during the aircraft's operation. The amendment became effective on February 9, 1989. The amendment appears herein as § 91.221.

Amendment No. 91-209 (54 FR 24883; June 9, 1989) delays the effective date of certain navigational equipment requirements of helicopter operations in a Terminal Control Area (TCA) by the amendment of § 91.91(c)(1). The amendment became effective on June 6, 1989. Section 91.131 covers this amendment.

Amendment No. 91-210 (54 FR 25682; June 16, 1989), effective June 16, 1989, amended § 91.24(a) to allow certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990. This amendment appears as § 91.215(a).

References to part 91 found in other sections of the Federal Aviation Regulations have also been amended to incorporate the revised numbering of part 91. These miscellaneous amendments are found at the end of the amendments to part 91.

Furthermore, §§ 91.615 through 91.645 as identified in Notice No. 79-2C (50 FR 11292; March 20, 1985) now appear in this final rule as §§ 91.503 through 91.533.

Regulatory Evaluation

FAA analysis indicates that these amendments will not have a significant impact on the public or any level of government on an annual basis. The final rule includes changes to clarify the existing rules by simplifying the language, deleting obsolete requirements, consolidating similar regulations, updating equipment requirements to reflect the state-of-the-art, and relaxing certain operating and flight rule requirements.

Benefits

Section 91.117 allows reciprocating-powered aircraft to be operated in an airport traffic area at indicated airspeeds not greater than 200 knots. The FAA is unable to determine operator time and fuel cost savings because they will largely depend on the type of aircraft involved, desired speed, and weather and traffic conditions. The

aggregate annual cost savings to these operators will not be significant because: (1) The normal cruise speed for most single engine reciprocating-powered aircraft does not exceed 156 knots, and (2) pilots of most multiengine reciprocating-powered aircraft, while operating within an airport traffic area, will not exceed the normal aircraft cruising speed which is not significantly greater than 156 knots in many of these aircraft.

Section 91.135 provides for a 2-day advance oral notification for submitting requests for authorizations to deviate from positive control area and route segment requirements. The old rule required a 4-day advance written notification of the proposed operation to ATC. A request for an authorization to deviate from these requirements is an infrequent occurrence. Consequently, the new rule will have minor benefits in terms of cost savings.

Sections 91.205, 91.509, and 91.511 clarify the definition of "shore" as that area of land adjacent to the water which is above the high water mark, thereby excluding tidal flats. From a safety standpoint, a tidal area covered with water is not as safe an emergency landing place as a dry shoreline. The main benefit is improved survivability from accidents in areas where for-hire operators may not be in compliance with the intent of the present rule. There is insufficient information in accident records to be able to estimate how many deaths could have been avoided through the use of life jackets and pyrotechnic signaling devices in these instances.

Costs

Any cost associated with defining "shore" in § 91.205 as the high water line is expected to be negligible. The only parties potentially affected are small for-hire operators who do not comply with the obvious intention of the rule as presently worded. The FAA believes these operators are very few (probably less than 20 operators) in number. Such operators are likely to be traversing tidal flats in areas like Alaska. If such operators do not comply with the rule as written now, then the cost of compliance would be a maximum of about \$105 per year per aircraft. This assumes a \$50 cost for an approved flotation device per seat and a flotation device useful life of 5 years (\$10 per passenger seat per year), 10 seats per aircraft for these specific operators, plus \$5 per year per aircraft for a pyrotechnic signaling device.

Section 91.409 allows operators of turbine-powered rotorcraft to use alternate inspection programs such as inspections under an FAA-approved

continuous airworthiness maintenance program. The operators may now schedule inspections in a manner that allows the highest level of utilization of their rotorcraft.

The FAA estimates that in 1984 there were approximately 3,000 active turbine-powered rotorcraft in non-air taxi use. The FAA assumes that about one-half of the operators of these aircraft would use the new inspection options.

The value of using these options is difficult to estimate. At a minimum, the major effect of this proposed rule would be one additional day per year of rotorcraft utility. The usefulness of this can be set at least at the cost of capital for 1 day. Using an average aircraft value of \$300,000 and a use of 250 days per year, the cost of capital can be estimated at \$180 per day (\$300,000 at 15 percent interest divided by 250 days). Thus, the minimum benefit is approximately \$0.27 million per year (half the fleet, 1500 turbine-powered rotorcraft times \$180). As the fleet grows, the value of this benefit also increases.

Because of the reorganization and resulting renumbering of provisions, persons who regularly refer to existing part 91 must familiarize themselves with the new structure. It is also recognized that many non-regulatory materials containing references to present part 91 sections may have to be modified. To assist in reference to the new provisions, a redesignation table, similar to the cross-reference table published herein, will be included in subsequent editions of the Code of Federal Regulations. The FAA believes that any short-term costs associated with transition to the reorganized part 91 will be outweighed by the benefits inherent in a more logically organized set of regulations.

Trade Impact

The FAA has determined that this regulation will have no impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." As discussed above, the regulatory evaluation for part 91 indicates that there are no negative or significant economic impacts associated with the proposed rule.

All but four of the changes to part 91 are editorial or clarifying changes. Three of the four changes result only in minimal benefits being applied. The other is a change to § 91.205 which, while it is basically clarifying, may involve some minimal cost and benefit. Any economic impact would be minor—approximately \$100 per aircraft per year and would affect only a few small for-hire operators in Alaska who do not comply with the intent of the rule as presently worded. Thus, the change could not be construed to cause "significant economic impact on a substantial number" of small entities within the meaning of the RFA. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Conclusion

The FAA has determined that this document is not considered major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It causes only four minor changes, three of which will provide benefits with no additional costs to the aviation public. The fourth will impose negligible costs which are substantially outweighed by the benefits provided. Other amendments provide general benefits by deleting obsolete requirements, relaxing certain operating and flight rule requirements, and updating and clarifying the text. Under the provisions of Executive Order 12291, the amendments in this final rule will not have a major economic effect on consumers; industries; Federal, State, or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets. It is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the full economic evaluation is filed in the public docket and may be obtained by contacting the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph of this document.

Cross Reference

To identify where present regulations are relocated in the new rule, the following cross-reference lists are provided:

CROSS REFERENCE TABLE

Old section	New section
91.1	91.1 and 91.703
91.2	91.193
91.3	91.3
91.4	91.5
91.5	91.103
91.6	91.189
91.7	91.105
91.8	91.11
91.9	91.13
91.10	91.13
91.11	91.17
91.12	91.19
91.13	91.15
91.14	91.107
91.15	91.307
91.17	91.309
91.18	91.311
91.19	91.21
91.20	91.705
91.21	91.109
91.22	91.151
91.23	91.167
91.24	91.215
91.25	91.171
91.26	91.221
91.27	91.203
91.28	91.715
91.29	91.7
91.30	91.213
91.31	91.9
91.32	91.211
91.33	91.205
91.34	91.191
91.35	91.609
91.36	91.217
91.37	91.605
91.38	91.323
91.39	91.313
91.40	91.315
91.41	91.317
91.42	91.319
91.43	91.711
91.45	91.811
91.47	91.607
91.49	91.603
91.50	Deleted
91.51	91.219
91.52	91.207
91.53	Deleted
91.54	91.23
91.55	91.817
91.56	91.815
91.57	91.25
91.58	91.613
91.59	91.321
91.61	91.101
91.63	91.903
91.65	91.111 and 91.123
91.67	91.113
91.69	91.115
91.70	91.117
91.71	91.303
91.73	91.209
91.75	91.123
91.77	91.125
91.79	91.119
91.81	91.121
91.83	91.153 and 91.169
91.84	91.707
91.85	91.127
91.87	91.129
91.88	91.130
91.89	91.127
91.90	91.131
91.91	91.137
91.93	91.305
91.95	91.133
91.97	91.135
91.100	91.139
91.101	91.709

CROSS REFERENCE TABLE—Continued

Old section	New section
91.102	91.143
91.103	91.713
91.104	91.141
91.105	91.155
91.107	91.157
91.109	91.159
91.115	91.173
91.116	91.175
91.117	Deleted
91.119	91.177
91.121	91.179
91.123	91.181
91.125	91.183
91.127	91.185
91.129	91.187
91.161	91.401
91.163	91.403
91.165	91.405
91.167	91.407
91.169	91.409
91.170	91.415
91.171	91.411
91.172	91.413
91.173	91.417
91.174	91.419
91.175	91.421
91.181	91.501
91.183	91.503
91.185	91.505
91.187	91.507
91.189	91.509
91.191	91.511
91.193	91.513
91.195	91.515
91.197	91.517
91.199	91.519
91.200	91.521
91.201	91.523
91.203	91.525
91.205	Deleted
91.207	Deleted
91.209	91.527
91.211	91.529
91.213	91.531
91.215	91.533
91.301	91.801
91.302	91.803
91.303	91.805
91.305	91.807
91.306	91.809
91.307	91.811
91.308	91.813
91.309	91.819
91.311	91.821
Appendix A	Appendix A
Appendix B	Appendix B
Appendix C	Appendix C
Appendix D	Appendix D
Appendix E	Appendix E
Appendix F	Appendix F

CROSS REFERENCE TABLE

New section	Old section
91.1	91.1
91.3	91.3
91.5	91.4
91.7	91.29
91.9	91.31
91.11	91.8
91.13	91.9 and 91.10
91.15	91.13
91.17	91.11
91.19	91.12
91.21	91.19
91.23	91.54
91.25	91.57

CROSS REFERENCE TABLE—Continued

New section	Old section
91.101.....	91.61.
91.103.....	91.5.
91.105.....	91.7.
91.107.....	91.14.
91.109.....	91.21.
91.111.....	91.65.
91.113.....	91.67.
91.115.....	91.69.
91.117.....	91.70.
91.119.....	91.79.
91.121.....	91.81.
91.123.....	91.75 and 91.65.
91.125.....	91.77.
91.127.....	91.85 and 91.89.
91.129.....	91.87.
91.130.....	91.88.
91.131.....	91.90.
91.133.....	91.95.
91.135.....	91.97.
91.137.....	91.91.
91.139.....	91.100.
91.141.....	91.104.
91.143.....	91.102.
91.151.....	91.22.
91.153.....	91.83.
91.155.....	91.105.
91.157.....	91.107.
91.159.....	91.109.
91.167.....	91.23.
91.169.....	91.83.
91.171.....	91.25.
91.173.....	91.115.
91.175.....	91.116.
91.177.....	91.119.
91.179.....	91.121.
91.181.....	91.123.
91.183.....	91.125.
91.185.....	91.127.
91.187.....	91.129.
91.189.....	91.6.
91.191.....	91.34.
91.193.....	91.2.
91.201.....	New.
91.203.....	91.27.
91.205.....	91.33.
91.207.....	91.52.
91.209.....	91.73.
91.211.....	91.32.
91.213.....	91.30.
91.215.....	91.24.
91.217.....	91.36.
91.219.....	91.51.
91.221.....	91.26.
91.301.....	New.
91.303.....	91.71.
91.305.....	91.93.
91.307.....	91.15.
91.309.....	91.17.
91.311.....	91.18.
91.313.....	91.39.
91.315.....	91.40.
91.317.....	91.41.
91.319.....	91.42.
91.321.....	91.59.
91.323.....	91.38.
91.401.....	91.161.
91.403.....	91.163.
91.405.....	91.165.
91.407.....	91.167.
91.409.....	91.169.
91.411.....	91.171.
91.413.....	91.172.
91.415.....	91.170.
91.417.....	91.173.
91.419.....	91.174.
91.421.....	91.175.
91.501.....	91.181.
91.503.....	91.183.
91.505.....	91.185.
91.507.....	91.187.

CROSS REFERENCE TABLE—Continued

New section	Old section
91.509.....	91.189.
91.511.....	91.191.
91.513.....	91.193.
91.515.....	91.195.
91.517.....	91.197.
91.519.....	91.199.
91.521.....	91.200.
91.523.....	91.201.
91.525.....	91.203.
91.527.....	91.209.
91.529.....	91.211.
91.531.....	91.213.
91.533.....	91.215.
91.601.....	New.
91.603.....	91.49.
91.605.....	91.37.
91.607.....	91.47.
91.609.....	91.35.
91.611.....	91.45.
91.613.....	91.58.
91.701.....	New.
91.703.....	91.1.
91.705.....	91.20.
91.707.....	91.84.
91.709.....	91.101.
91.711.....	91.43.
91.713.....	91.103.
91.715.....	91.28.
91.801.....	91.301.
91.803.....	91.302.
91.805.....	91.303.
91.807.....	91.305.
91.809.....	91.306.
91.811.....	91.307.
91.813.....	91.308.
91.815.....	91.56.
91.817.....	91.55.
91.819.....	91.309.
91.821.....	91.311.
91.901.....	New.
91.903.....	91.63.
91.905.....	New.
Appendix A.....	Appendix A.
Appendix B.....	Appendix B.
Appendix C.....	Appendix C.
Appendix D.....	Appendix D.
Appendix E.....	Appendix E.
Appendix F.....	Appendix F.
Newly Established Rules.....	91.201, 91.301, 91.601, 91.701, 91.901, 91.905.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Tires.

14 CFR Part 31

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 36

Aircraft noise, Type certification.

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 45

Nationality, Air safety, Safety, Aviation safety, Air transportation, Transportation, Airplanes, Helicopters, Rotorcraft.

14 CFR Part 47

Aliens, Transportation, Nationality, Air safety, Safety, Aviation safety, Air transportation, Citizenship and naturalization, Corporations, Treaties.

14 CFR Part 61

Airmen, Balloons, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Students, Foreign persons, Transportation, International agreements, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse, Compensation, Education, Teachers.

14 CFR Part 63

Airmen, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Transportation, Aircraft, Airplanes, Helicopters, Rotorcraft, Drug abuse.

14 CFR Part 65

Airmen, Parachutes, Transportation, Narcotics, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Drug abuse.

14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo,

Smoking, Airports, Airworthiness directives and standards.

14 CFR Part 93

Special air traffic rules.

14 CFR Part 99

Air defense zone, Identification of foreign aircraft.

14 CFR Part 103

Safety, Ultralight, Ultralight certification, Ultralight operations, Ultralight pilot, Ultralight registration.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Airworthiness directives and standards, Beverages, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Hours of work, Infants, Liquor, Mail, Drugs, Pilots, Smoking, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

14 CFR Part 127

Aircraft, Air carriers, Narcotics, Airworthiness, Cargo, Airmen, Pilots, Air traffic control, Helicopters, Drugs, Airspace, Weapons, Alcohol, Hours of work, Children, Infants, Smoking, Beverages.

14 CFR Part 133

Aircraft, Airworthiness, Narcotics, Pilots, Drugs, Mail.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Narcotics, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Alcohol, Airports, Hours of work, Hazardous materials, Weapons, Baggage, Transportation, Mail, Helicopters, Smoking, Beverages, Air traffic control, Handicapped, Drugs, Airspace, Chemicals, Airplanes.

14 CFR Part 137

Aircraft, Narcotics, Rotorcraft, Pilots, Air traffic control, Airports.

14 CFR Part 141

Airmen, Balloons, Parachutes, Aircraft pilots, Pilots, Educational facilities, Students, Transportation, Air safety, Safety, Aviation safety, Air transportation, Airplanes, Helicopters,

Rotorcraft, Education, Schools, Teachers, Business and industry.

The Rule

For the reasons set forth above, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended to read as follows; and parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141 of the Federal Aviation Regulations (14 CFR parts 1, 21, 23, 25, 27, 31, 33, 35, 36, 43, 45, 47, 61, 63, 65, 71, 93, 99, 103, 121, 125, 127, 133, 135, 137, and 141) are amended as follows:

1. By amending part 91 by revising subparts A-E and appendices A-F and by adding subparts F-J to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

Special Federal Aviation Regulations

* * * * *

Subpart A—General

Sec.

- 91.1 Applicability.
- 91.3 Responsibility and authority of the pilot in command.
- 91.5 Pilot in command of aircraft requiring more than one required pilot.
- 91.7 Civil aircraft airworthiness.
- 91.9 Civil aircraft flight manual, marking, and placard requirements.
- 91.11 Prohibition against interference with crewmembers.
- 91.13 Careless or reckless operation.
- 91.15 Dropping objects.
- 91.17 Alcohol or drugs.
- 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
- 91.21 Portable electronic devices.
- 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.
- 91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.
- 91.27-91.99 [Reserved]

Subpart B—Flight Rules

General

- 91.101 Applicability.
- 91.103 Preflight action.
- 91.105 Flight crewmembers at stations.
- 91.107 Use of safety belts.
- 91.109 Flight instruction; Simulated instrument flight and certain flight tests.
- 91.111 Operating near other aircraft.
- 91.113 Right-of-way rules: Except water operations.
- 91.115 Right-of-way rules: Water operations.
- 91.117 Aircraft speed.
- 91.119 Minimum safe altitudes: General.
- 91.121 Altimeter settings.
- 91.123 Compliance with ATC clearances and instructions.
- 91.125 ATC light signals.
- 91.127 Operating on or in the vicinity of an airport: General rules.
- 91.129 Operation at airports with operating control towers.

- 91.130 Airport radar service areas.
- 91.131 Terminal control areas.
- 91.133 Restricted and prohibited areas.
- 91.135 Positive control areas and route segments.
- 91.137 Temporary flight restrictions.
- 91.139 Emergency air traffic rules.
- 91.141 Flight restrictions in the proximity of the Presidential and other parties.
- 91.143 Flight limitation in the proximity of space flight operations.
- 91.145-91.149 [Reserved]

Visual Flight Rules

- 91.151 Fuel requirements for flight in VFR conditions.
- 91.153 VFR flight plan: Information required.
- 91.155 Basic VFR weather minimums.
- 91.157 Special VFR weather minimums.
- 91.159 VFR cruising altitude or flight level.
- 91.161-91.165 [Reserved]

Instrument Flight Rules

- 91.167 Fuel requirements for flight in IFR conditions.
- 91.169 IFR flight plan: Information required.
- 91.171 VOR equipment check for IFR operations.
- 91.173 ATC clearance and flight plan required.
- 91.175 Takeoff and landing under IFR.
- 91.177 Minimum altitudes for IFR operations.
- 91.179 IFR cruising altitude or flight level.
- 91.181 Course to be flown.
- 91.183 IFR radio communications.
- 91.185 IFR operations: Two-way radio communications failure.
- 91.187 Operation under IFR in controlled airspace: Malfunction reports.
- 91.189 Category II and III operations: General operating rules.
- 91.191 Category II manual.
- 91.193 Certificate of authorization for certain Category II operations.
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Appendix F—Helicopter Flight Recorder Specifications

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

Subpart A—General

§ 91.1 Applicability.

(a) Except as provided in paragraph (b) of this section and § 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with §§ 91.1 through 91.21; §§ 91.101 through 91.149; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; § 91.323; § 91.605; § 91.609; §§ 91.703 through 91.715; and 91.903.

§ 91.3 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

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§ 91.5 Pilot in command of aircraft requiring more than one required pilot.

No person may operate an aircraft that is type certificated for more than one required pilot flight crewmember unless the pilot in command meets the requirements of § 61.58 of this chapter.

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§ 91.9 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certifying authority of the country of registry.

(b) No person may operate a U.S.-registered civil aircraft—

(1) For which an Airplane or Rotorcraft Flight Manual is required by § 21.5 of this chapter unless there is available in the aircraft a current, approved Airplane or Rotorcraft Flight Manual or the manual provided for in § 121.141(b); and

(2) For which an Airplane or Rotorcraft Flight Manual is not required by § 21.5 of this chapter, unless there is available in the aircraft a current approved Airplane or Rotorcraft Flight Manual, approved manual material, markings, and placards, or any combination thereof.

(c) No person may operate a U.S.-registered civil aircraft unless that aircraft is identified in accordance with part 45 of this chapter.

(d) Any person taking off or landing a helicopter certificated under part 29 of this chapter at a heliport constructed over water may make such momentary flight as is necessary for takeoff or landing through the prohibited range of the limiting height-speed envelope established for the helicopter if that flight through the prohibited range takes place over water on which a safe ditching can be accomplished and if the helicopter is amphibious or is equipped with floats or other emergency flotation gear adequate to accomplish a safe emergency ditching on open water.

§ 91.11 Prohibition against interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for

receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

§ 91.15 Dropping objects.

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

§ 91.17 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) A crewmember shall do the following:

(1) On request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood, when—

(i) The law enforcement officer is authorized under State or local law to conduct the test or to have the test conducted; and

(ii) The law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited by paragraph (a)(1), (a)(2), or (a)(4) of this section.

(2) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

(d) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(3) of this section, that person shall,

upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

§ 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

§ 91.21 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft:

(1) Aircraft operated by a holder of an air carrier operating certificate or an operating certificate; or

(2) Any other aircraft while it is operated under IFR.

(b) Paragraph (a) of this section does not apply to—

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the operator of the aircraft has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) In the case of an aircraft operated by a holder of an air carrier operating certificate or an operating certificate, the determination required by paragraph (b)(5) of this section shall be made by that operator of the aircraft on which

the particular device is to be used. In the case of other aircraft, the determination may be made by the pilot in command or other operator of the aircraft.

§ 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.

(a) Except as provided in paragraph (b) of this section, the parties to a lease or contract of conditional sale involving a U.S.-registered large civil aircraft and entered into after January 2, 1973, shall execute a written lease or contract and include therein a written truth-in-leasing clause as a concluding paragraph in large print, immediately preceding the space for the signature of the parties, which contains the following with respect to each such aircraft:

(1) Identification of the Federal Aviation Regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale, and certification by the parties thereto regarding the aircraft's status of compliance with applicable maintenance and inspection requirements in this part for the operation to be conducted under the lease or contract of conditional sale.

(2) The name and address (printed or typed) and the signature of the person responsible for operational control of the aircraft under the lease or contract of conditional sale, and certification that each person understands that person's responsibilities for compliance with applicable Federal Aviation Regulations.

(3) A statement that an explanation of factors bearing on operational control and pertinent Federal Aviation Regulations can be obtained from the nearest FAA Flight Standards district office.

(b) The requirements of paragraph (a) of this section do not apply—

(1) To a lease or contract of conditional sale when—

(i) The party to whom the aircraft is furnished is a foreign air carrier or certificate holder under part 121, 125, 127, 135, or 141 of this chapter, or

(ii) The party furnishing the aircraft is a foreign air carrier, certificate holder under part 121, 125, 127, or 141 of this chapter, or a certificate holder under part 135 of this chapter having appropriate authority to engage in air taxi operations with large aircraft.

(2) To a contract of conditional sale, when the aircraft involved has not been registered anywhere prior to the execution of the contract, except as a new aircraft under a dealer's aircraft

registration certificate issued in accordance with § 47.61 of this chapter.

(c) No person may operate a large civil aircraft of U.S. registry that is subject to a lease or contract of conditional sale to which paragraph (a) of this section applies, unless—

(1) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has mailed a copy of the lease or contract that complies with the requirements of paragraph (a) of this section, within 24 hours of its execution, to the Aircraft Registry Technical Section, P.O. Box 25724, Oklahoma City, Oklahoma 73125;

(2) A copy of the lease or contract that complies with the requirements of paragraph (a) of this section is carried in the aircraft. The copy of the lease or contract shall be made available for review upon request by the Administrator, and

(3) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has notified by telephone or in person the FAA Flight Standards district office nearest the airport where the flight will originate. Unless otherwise authorized by that office, the notification shall be given at least 48 hours before takeoff in the case of the first flight of that aircraft under that lease or contract and inform the FAA of—

(i) The location of the airport of departure;

(ii) The departure time; and

(iii) The registration number of the aircraft involved.

(d) The copy of the lease or contract furnished to the FAA under paragraph (c) of this section is commercial or financial information obtained from a person. It is, therefore, privileged and confidential and will not be made available by the FAA for public inspection or copying under 5 U.S.C. 552(b)(4) unless recorded with the FAA under part 49 of this chapter.

(e) For the purpose of this section, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft and a contract of conditional sale under section 101 of the Federal Aviation Act of 1958. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.

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§ 91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.

The Administrator of the FAA will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses which are wholly excluded from the Program.

§ 91.27-91.99 [Reserved]

Subpart B—Flight Rules

General

§ 91.101 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

§ 91.103 Preflight action.

Each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include—

(a) For a flight under IFR or a flight not in the vicinity of an airport, weather reports and forecasts, fuel requirements, alternatives available if the planned flight cannot be completed, and any known traffic delays of which the pilot in command has been advised by ATC;

(b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:

(1) For civil aircraft for which an approved Airplane or Rotorcraft Flight Manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and

(2) For civil aircraft other than those specified in paragraph (b)(1) of this section, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature.

§ 91.105 Flight crewmembers at stations.

(a) During takeoff and landing, and while en route, each required flight crewmember shall—

(1) Be at the crewmember station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and

(2) Keep the safety belt fastened while at the crewmember station.

(b) Each required flight crewmember of a U.S.-registered civil airplane shall, during takeoff and landing, keep the shoulder harness fastened while at the crewmember station. This paragraph does not apply if—

(1) The seat at the crewmember's station is not equipped with a shoulder harness; or

(2) The crewmember would be unable to perform required duties with the shoulder harness fastened.

§ 91.107 Use of safety belts.

(a) No pilot may take off a U.S.-registered civil aircraft (except an airship or free balloon that incorporates a basket or gondola) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and shoulder harness, if installed. The pilot in command shall ensure that all persons on board have been notified to fasten their safety belt and shoulder harness, if installed, before takeoff or landing.

(b) During the takeoff and landing of a U.S.-registered civil aircraft (except an airship or a free balloon that incorporates a basket or gondola) each person on board that aircraft must occupy an approved seat or berth with a safety belt and shoulder harness, if installed, properly secured about that person. However, a person who has not reached the second birthday may be held by an adult who is occupying an approved seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(c) This section does not apply to operations conducted under part 121, 125, 127, or 135 of this chapter. Paragraph (b) of this section does not apply to persons subject to § 91.105.

§ 91.109 Flight instruction; Simulated instrument flight and certain flight tests.

(a) No person may operate a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, instrument flight instruction may be given in a single-engine airplane equipped with a single, functioning throwover control wheel in place of fixed, dual controls of the elevator and ailerons when—

(1) The instructor has determined that the flight can be conducted safely; and

(2) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(b) No person may operate a civil aircraft in simulated instrument flight unless—

(1) The other control seat is occupied by a safety pilot who possesses at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

(2) The safety pilot has adequate vision forward and to each side of the aircraft, or a competent observer in the aircraft adequately supplements the vision of the safety pilot; and

(3) Except in the case of lighter-than-air aircraft, that aircraft is equipped with fully functioning dual controls. However, simulated instrument flight may be conducted in a single-engine airplane, equipped with a single, functioning, throwover control wheel, in place of fixed, dual controls of the elevator and ailerons, when—

(i) The safety pilot has determined that the flight can be conducted safely; and

(ii) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(c) No person may operate a civil aircraft that is being used for a flight test for an airline transport pilot certificate or a class or type rating on that certificate, or for a part 121 proficiency flight test, unless the pilot seated at the controls, other than the pilot being checked, is fully qualified to act as pilot in command of the aircraft.

§ 91.111 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.

(c) No person may operate an aircraft, carrying passengers for hire, in formation flight.

§ 91.113 Right-of-way rules: Except water operations.

(a) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

(b) *General.* When weather conditions permit, regardless of whether an operation is conducted under instrument flight rules or visual flight rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft. When a rule of this section gives another aircraft the right-of-way, the pilot shall give way to that aircraft and may not pass over, under, or ahead of it unless well clear.

(c) *In distress.* An aircraft in distress has the right-of-way over all other air traffic.

(d) *Converging.* When aircraft of the same category are converging at

approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way. If the aircraft are of different categories—

(1) A balloon has the right-of-way over any other category of aircraft;

(2) A glider has the right-of-way over an airship, airplane, or rotorcraft; and

(3) An airship has the right-of-way over an airplane or rotorcraft.

However, an aircraft towing or refueling other aircraft has the right-of-way over all other engine-driven aircraft.

(e) *Approaching head-on.* When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(f) *Overtaking.* Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right-of-way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land or to overtake that aircraft.

§ 91.115 Right-of-way rules: Water operations.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on, or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing

circumstances, including the limitations of the respective craft.

§ 91.117 Aircraft speed.

(a) No person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 m.p.h.).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area at an indicated airspeed of more than 200 knots (230 m.p.h.). This paragraph (b) does not apply to any operations within a terminal control area. Such operations shall comply with paragraph (a) of this section.

(c) No person may operate an aircraft in the airspace underlying a terminal control area, or in a VFR corridor designated through a terminal control area, at an indicated airspeed of more than 200 knots (230 m.p.h.).

(d) If the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with any routes or altitudes specifically prescribed for helicopters by the Administrator.

§ 91.121 Altimeter settings.

(a) Each person operating an aircraft shall maintain the cruising altitude or flight level of that aircraft, as the case may be, by reference to an altimeter that is set, when operating—

(1) Below 18,000 feet MSL, to—

(i) The current reported altimeter setting of a station along the route and within 100 nautical miles of the aircraft;

(ii) If there is no station within the area prescribed in paragraph (a)(1)(i) of this section, the current reported altimeter setting of an appropriate available station; or

(iii) In the case of an aircraft not equipped with a radio, the elevation of the departure airport or an appropriate altimeter setting available before departure; or

(2) At or above 18,000 feet MSL, to 29.92" Hg.

(b) The lowest usable flight level is determined by the atmospheric pressure in the area of operation as shown in the following table:

Current altimeter setting	Lowest usable flight level
29.92 (or higher)	180
29.91 through 29.42	185
29.41 through 28.92	190
28.91 through 28.42	195
28.41 through 27.92	200
27.91 through 27.42	205
27.41 through 26.92	210

(c) To convert minimum altitude prescribed under §§ 91.119 and 91.177 to the minimum flight level, the pilot shall take the flight level equivalent of the minimum altitude in feet and add the appropriate number of feet specified below, according to the current reported altimeter setting:

Current altimeter setting	Adjustment factor
29.92 (or higher)	None
29.91 through 29.42	500
29.41 through 28.92	1,000
28.91 through 28.42	1,500
28.41 through 27.92	2,000
27.91 through 27.42	2,500
27.41 through 26.92	3,000

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained. A pilot in command may cancel an IFR flight plan if that pilot is operating in VFR weather conditions outside of positive controlled airspace. If a pilot is uncertain of the meaning of an ATC clearance, the pilot shall immediately request clarification from ATC.

(b) Except in an emergency, no person may operate an aircraft contrary to an

ATC instruction in an area in which air traffic control is exercised.

(c) Each pilot in command who, in an emergency, deviates from an ATC clearance or instruction shall notify ATC of that deviation as soon as possible.

(d) Each pilot in command who (though not deviating from a rule of this subpart) is given priority by ATC in an emergency, shall submit a detailed report of that emergency within 48 hours to the manager of that ATC facility, if requested by ATC.

(e) Unless otherwise authorized by ATC, no person operating an aircraft may operate that aircraft according to any clearance or instruction that has been issued to the pilot of another aircraft for radar air traffic control purposes.

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§ 91.125 ATC light signals.

ATC light signals have the meaning shown in the following table:

Color and type of signal	Meaning with respect to aircraft on the surface	Meaning with respect to aircraft in flight
Steady green	Cleared for takeoff.	Cleared to land.
Flashing green	Cleared to taxi.	Return for landing (to be followed by steady green at proper time).
Steady red	Stop	Give way to other aircraft and continue circling.
Flashing red	Taxi clear of runway in use.	Airport unsafe—do not land.
Flashing white	Return to starting point on airport.	Not applicable.
Alternating red and green.	Exercise extreme caution.	Exercise extreme caution.

§ 91.127 Operating on or in the vicinity of an airport: General rules.

(a) Unless otherwise required by part 93 of this chapter, each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section and, if applicable, of § 91.129.

(b) Each person operating an aircraft to or from an airport without an operating control tower shall—

(1) In the case of an airplane approaching to land, make all turns of that airplane to the left unless the airport displays approved light signals

or visual markings indicating that turns should be made to the right, in which case the pilot shall make all turns to the right;

(2) In the case of a helicopter approaching to land, avoid the flow of fixed-wing aircraft; and

(3) In the case of an aircraft departing the airport, comply with any traffic patterns established for that airport in part 93.

(c) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area except for the purpose of landing at, or taking off from, an airport within that area. ATC authorization may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

(d) Except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the airplane flight manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of the airplane and may use a different flap setting approved for that airplane if it is necessary in the interest of safety.

§ 91.129 Operation at airports with operating control towers.

(a) *General.* Unless otherwise authorized or required by ATC, each person operating an aircraft to, from, or on an airport with an operating control tower shall comply with the applicable provisions of this section.

(b) *Communications with control towers operated by the United States.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

(c) *Communications with other control towers.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower that is operated by any person other than the United States unless—

(1) If that aircraft's radio equipment so allows, two-way radio communications are maintained between the aircraft and the tower; or

(2) If that aircraft's radio equipment allows only reception from the tower, the pilot has the tower's frequency monitored.

(d) *Minimum altitudes.* When operating to an airport with an operating control tower, each pilot of—

(1) A turbine-powered airplane or a large airplane shall, unless otherwise required by the applicable distance from cloud criteria, enter the airport traffic area at an altitude of at least 1,500 feet above the surface of the airport and maintain an altitude of at least 1,500 feet within the airport traffic area, including the traffic pattern, until further descent is required for a safe landing;

(2) A turbine-powered airplane or a large airplane approaching to land on a runway being served by an ILS, if the airplane is ILS equipped, shall fly that airplane at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) An airplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

However, paragraphs (d) (2) and (3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(e) *Approaches.* When approaching to land at an airport with an operating control tower, each pilot of—

(1) An airplane shall circle the airport to the left; and

(2) A helicopter shall avoid the flow of fixed-wing aircraft.

(f) *Departures.* No person may operate an aircraft taking off from an airport with an operating control tower except in compliance with the following:

(1) Each pilot shall comply with any departure procedures established for that airport by the FAA.

(2) Unless otherwise required by the departure procedure or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane shall climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(g) *Noise abatement runway system.* When landing or taking off from an airport with an operating control tower

and for which a formal runway use program has been established by the FAA, each pilot of a turbine-powered airplane and each pilot of a large airplane assigned a noise abatement runway by ATC shall use that runway. However, consistent with the final authority of the pilot in command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

(h) *Clearances required.* No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

§ 91.130 Airport radar service areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures.* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic patterns.* No person may take off or land an aircraft at a satellite airport within an airport radar service

area except in compliance with FAA arrival and departure traffic patterns.

(f) *Equipment requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft within an airport radar service area unless that aircraft is equipped with the applicable equipment specified in § 91.215.

§ 91.131 Terminal control areas.

(a) *Operating rules.* No person may operate an aircraft within a terminal control area designated in part 71 of this chapter except in compliance with the following rules:

(1) No person may operate an aircraft within a terminal control area unless that person has received an appropriate authorization from ATC prior to operation of that aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(3) Any person conducting pilot training operations at an airport within a terminal control area shall comply with any procedures established by ATC for such operations in terminal control area.

(b) *Pilot requirements.* (1) No person may takeoff or land a civil aircraft at an airport within a terminal control area or operate a civil aircraft within a terminal control area unless:

(i) The pilot-in-command holds at least a private pilot certificate; or,

(ii) The aircraft is operated by a student pilot who has met the requirements of § 61.95.

(2) Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, at the following TCA primary airports, no person may takeoff or land a civil aircraft unless the pilot-in-command holds at least a private pilot certificate:

- (i) Atlanta Hartsfield Airport, GA.
- (ii) Boston Logan Airport, MA.
- (iii) Chicago O'Hare International Airport, IL.
- (iv) Dallas/Fort Worth International Airport, TX.
- (v) Los Angeles International Airport, CA.
- (vi) Miami International Airport, FL.
- (vii) Newark International Airport, NJ.
- (viii) New York Kennedy Airport, NY.
- (ix) New York La Guardia Airport, NY.
- (x) San Francisco International Airport, CA.
- (xi) Washington National Airport, DC.
- (xii) Andrews Air Force Base, MD.

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person

may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) An operable VOR or TACAN receiver (except for helicopter operations prior to January 1, 1990; and

(2) An operable two-way radio capable of communications with ATC on appropriate frequencies for that terminal control area.

(d) *Transponder requirement.* No person may operate an aircraft in a terminal control area unless the aircraft is equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.215, except as provided in paragraph (d) of that section.

§ 91.133 Restricted and prohibited areas.

(a) No person may operate an aircraft within a restricted area (designated in part 73) contrary to the restrictions imposed, or within a prohibited area, unless that person has the permission of the using or controlling agency, as appropriate.

(b) Each person conducting, within a restricted area, an aircraft operation (approved by the using agency) that creates the same hazards as the operations for which the restricted area was designated may deviate from the rules of this subpart that are not compatible with the operation of the aircraft.

§ 91.135 Positive control areas and route segments.

(a) Except as provided in paragraph (b) of this section, no person may operate an aircraft within a positive control area or positive control route segment designated in part 71 of this chapter unless the aircraft is—

(1) Operated under IFR at a specific flight level assigned by ATC;

(2) Equipped with instruments and equipment required for IFR operations;

(3) Flown by a pilot rated for instrument flight; and

(4) Equipped, when in a positive control area, with—

(i) The applicable equipment specified in § 91.215; and

(ii) A radio providing direct pilot/controller communication on the frequency specified by ATC for the area concerned.

(b) ATC may authorize deviations from the requirements of paragraph (a) of this section. In the case of an inoperative transponder, ATC may immediately approve an operation within a positive control area allowing flight to continue, if desired, to the airport of ultimate destination, including any intermediate stops, or to proceed to

a place where suitable repairs can be made, or both. A request for authorization to deviate from a requirement of paragraph (a) of this section, other than for operation with an inoperative transponder as outlined above, must be submitted at least 48 hours before the proposed operation to the ATC center having jurisdiction over the positive control area concerned. ATC may authorize deviation on a continuing basis or for an individual flight, as appropriate.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.137 Temporary flight restrictions.

(a) The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to—

(1) Protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;

(2) Provide a safe environment for the operation of disaster relief aircraft; or

(3) Prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

(b) When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

(1) The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is operating under the ATC approved IFR flight plan.

(4) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility

specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.

(5) The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

(d) When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

(2) The aircraft is operating under an ATC approved IFR flight plan.

(3) The aircraft is carrying incident or event personnel, or law enforcement officials.

(4) The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

(e) Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

(1) Aircraft identification, type and color.

(2) Radio communications frequencies to be used.

(3) Proposed times of entry of, and exit from, the designated area.

(4) Name of news media or organization and purpose of flight.

(5) Any other information requested by ATC.

§ 91.139 Emergency air traffic rules.

(a) This section prescribes a process for utilizing Notices to Airmen (NOTAMs) to advise of the issuance and operations under emergency air traffic rules and regulations and designates the official who is authorized to issue NOTAMs on behalf of the Administrator in certain matters under this section.

(b) Whenever the Administrator determines that an emergency condition exists, or will exist, relating to the

FAA's ability to operate the air traffic control system and during which normal flight operations under this chapter cannot be conducted consistent with the required levels of safety and efficiency—

(1) The Administrator issues an immediately effective air traffic rule or regulation in response to that emergency condition; and

(2) The Administrator or the Associate Administrator for Air Traffic may utilize the NOTAM system to provide notification of the issuance of the rule or regulation.

Those NOTAMs communicate information concerning the rules and regulations that govern flight operations, the use of navigation facilities, and designation of that airspace in which the rules and regulations apply.

(c) When a NOTAM has been issued under this section, no person may operate an aircraft, or other device governed by the regulation concerned, within the designated airspace except in accordance with the authorizations, terms, and conditions prescribed in the regulation covered by the NOTAM.

§ 91.141 Flight restrictions in the proximity of the Presidential and other parties.

No person may operate an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM).

§ 91.143 Flight limitation in the proximity of space flight operations.

No person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration within areas designated in a Notice to Airmen (NOTAM) for space flight operations except when authorized by ATC, or operated under the control of the Department of Defense Manager for Space Transportation System Contingency Support Operations.

§§ 91.145–91.149 [Reserved]

Visual Flight Rules

§ 91.151 Fuel requirements for flight in VFR conditions.

(a) No person may begin a flight in an airplane under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed—

(1) During the day, to fly after that for at least 30 minutes; or

(2) At night, to fly after that for at least 45 minutes.

(b) No person may begin a flight in a rotorcraft under VFR conditions unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed, to fly after that for at least 20 minutes.

§ 91.153 VFR flight plan: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing a VFR flight plan shall include in it the following information:

(1) The aircraft identification number and, if necessary, its radio call sign.

(2) The type of the aircraft or, in the case of a formation flight, the type of each aircraft and the number of aircraft in the formation.

(3) The full name and address of the pilot in command or, in the case of a formation flight, the formation commander.

(4) The point and proposed time of departure.

(5) The proposed route, cruising altitude (or flight level), and true airspeed at that altitude.

(6) The point of first intended landing and the estimated elapsed time until over that point.

(7) The amount of fuel on board (in hours).

(8) The number of persons in the aircraft, except where that information is otherwise readily available to the FAA.

(9) Any other information the pilot in command or ATC believes is necessary for ATC purposes.

(b) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in § 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescribed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface (regardless of MSL altitude)—		
Within controlled airspace.....	3 statute miles.....	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace.....	1 statute mile except as provided in § 91.155(b).....	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL—		
Within controlled airspace.....	3 statute miles.....	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace.....	1 statute mile.....	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5 statute miles.....	1,000 feet below, 1,000 feet above, 1 mile horizontal.

(b) When the visibility is less than 1 statute mile, a helicopter may be operated outside controlled airspace at 1,200 feet or less above the surface if operated at a speed that allows the pilot adequate opportunity to see any air traffic or other obstruction in time to avoid a collision.

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

(d) Except as provided in § 91.157, no person may take off or land an aircraft, or enter the traffic pattern of an airport, under VFR, within a control zone—

(1) Unless ground visibility at that airport is at least 3 statute miles; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff, or while operating in the traffic pattern, is at least 3 statute miles.

(e) For the purposes of this section, an aircraft operating at the base altitude of a transition area or control area is considered to be within the airspace directly below that area.

§ 91.157 Special VFR weather minimums.

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance, the special weather minimums of this section instead of those contained in § 91.155 apply to the operation of an aircraft by that person in a control zone under VFR.

(b) No person may operate an aircraft in a control zone under VFR except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) in a control zone under VFR unless flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter) at any airport in a control zone under VFR—

(1) Unless ground visibility at that airport is at least 1 statute mile; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff is at least 1 statute mile.

(e) No person may operate an aircraft (other than a helicopter) in a control zone under the special weather minimums of this section, between sunset and sunrise (or in Alaska, when the sun is more than 6 degrees below the horizon) unless:

(1) That person meets the applicable requirements for instrument flight under part 61 of this chapter; and

(2) The aircraft is equipped as required in § 91.205(d).

§ 91.159 VFR cruising altitude or flight level.

Except while holding in a holding pattern of 2 minutes or less, or while turning, each person operating an aircraft under VFR in level cruising flight more than 3,000 feet above the surface shall maintain the appropriate altitude or flight level prescribed below, unless otherwise authorized by ATC:

(a) When operating below 18,000 feet MSL and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude + 500 feet (such as 3,500, 5,500, or 7,500); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude + 500 feet (such as 4,500, 6,500, or 8,500).

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level + 500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level + 500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380); or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning

at and including flight level 320 (such as flight level 320, 360, or 400).

§§ 91.161-91.165 [Reserved]

Instrument Flight Rules

§ 91.167 Fuel requirements for flight in IFR conditions.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if—

(1) Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing; and

(2) For at least 1 hour before and 1 hour after the estimated time of arrival at the airport, the weather reports or forecasts or any combination of them indicate—

(i) The ceiling will be at least 2,000 feet above the airport elevation; and

(ii) Visibility will be at least 3 statute miles.

§ 91.169 IFR flight plan: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a).

(2) An alternate airport, except as provided in paragraph (b) of this section.

(b) *Exceptions to applicability of paragraph (a)(2) of this section.* Paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument

approach procedure for the first airport of intended landing and, for at least 1 hour before and 1 hour after the estimated time of arrival, the weather reports or forecasts, or any combination of them, indicate—

- (1) The ceiling will be at least 2,000 feet above the airport elevation; and
- (2) The visibility will be at least 3 statute miles.

(c) *IFR alternate airport weather minimums.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate airport weather minimums:

- (1) If an instrument approach procedure has been published in part 97 of this chapter for that airport, the alternate airport minimums specified in that procedure or, if none are so specified, the following minimums:

- (i) Precision approach procedure: Ceiling 600 feet and visibility 2 statute miles.
- (ii) Nonprecision approach procedure: Ceiling 800 feet and visibility 2 statute miles.

- (2) If no instrument approach procedure has been published in part 97 of this chapter for that airport, the ceiling and visibility minimums are those allowing descent from the MEA, approach, and landing under basic VFR.

(d) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

§ 91.171 VOR equipment check for IFR operations.

(a) No person may operate a civil aircraft under IFR using the VOR system of radio navigation unless the VOR equipment of that aircraft—

- (1) Is maintained, checked, and inspected under an approved procedure; or
- (2) Has been operationally checked within the preceding 30 days, and was found to be within the limits of the permissible indicated bearing error set forth in paragraph (b) or (c) of this section.

(b) Except as provided in paragraph (c) of this section, each person conducting a VOR check under paragraph (a)(2) of this section shall—

- (1) Use, at the airport of intended departure, an FAA-operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station

or, outside the United States, a test signal operated or approved by an appropriate authority to check the VOR equipment (the maximum permissible indicated bearing error is plus or minus 4 degrees); or

- (2) Use, at the airport of intended departure, a point on the airport surface designated as a VOR system checkpoint by the Administrator, or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 4 degrees);

(3) If neither a test signal nor a designated checkpoint on the surface is available, use an airborne checkpoint designated by the Administrator or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 6 degrees); or

- (4) If no check signal or point is available, while in flight—

(i) Select a VOR radial that lies along the centerline of an established VOR airway;

(ii) Select a prominent ground point along the selected radial preferably more than 20 nautical miles from the VOR ground facility and maneuver the aircraft directly over the point at a reasonably low altitude; and

(iii) Note the VOR bearing indicated by the receiver when over the ground point (the maximum permissible variation between the published radial and the indicated bearing is 6 degrees).

(c) If dual system VOR (units independent of each other except for the antenna) is installed in the aircraft, the person checking the equipment may check one system against the other in place of the check procedures specified in paragraph (b) of this section. Both systems shall be tuned to the same VOR ground facility and note the indicated bearings to that station. The maximum permissible variation between the two indicated bearings is 4 degrees.

(d) Each person making the VOR operational check, as specified in paragraph (b) or (c) of this section, shall enter the date, place, bearing error, and sign the aircraft log or other record. In addition, if a test signal radiated by a repair station, as specified in paragraph (b)(1) of this section, is used, an entry must be made in the aircraft log or other record by the repair station certificate holder or the certificate holder's representative certifying to the bearing transmitted by the repair station for the check and the date of transmission.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.173 ATC clearance and flight plan required.

No person may operate an aircraft in controlled airspace under IFR unless that person has—

- (a) Filed an IFR flight plan; and
- (b) Received an appropriate ATC clearance.

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.*

Unless otherwise authorized by the Administrator, when an instrument letdown to a civil airport is necessary, each person operating an aircraft, except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in part 97 of this chapter.

(b) *Authorized DH or MDA.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH or MDA, the authorized DH or MDA is the highest of the following:

- (1) The DH or MDA prescribed by the approach procedure.
- (2) The DH or MDA prescribed for the pilot in command.
- (3) The DH or MDA for which the aircraft is equipped.

(c) *Operation below DH or MDA.* Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—

- (1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and for operations conducted under part 121 or part 135 unless that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The flight visibility is not less than the visibility prescribed in the standard instrument approach being used; and

(3) Except for a Category II or Category III approach where any necessary visual reference requirements are specified by the Administrator, at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

- (i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

- (ii) The threshold.
- (iii) The threshold markings.
- (iv) The threshold lights.
- (v) The runway end identifier lights.
- (vi) The visual approach slope indicator.

- (vii) The touchdown zone or touchdown zone markings.
- (viii) The touchdown zone lights.
- (ix) The runway or runway markings.
- (x) The runway lights.

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist:

(1) Whenever the requirements of paragraph (c) of this section are not met at either of the following times:

(i) When the aircraft is being operated below MDA; or

(ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown.

(2) Whenever an identifiable part of the airport is not distinctly visible to the pilot during a circling maneuver at or above MDA, unless the inability to see an identifiable part of the airport results only from a normal bank of the aircraft during the circling approach.

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no pilot operating an aircraft under parts 121, 125, 127, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimum for IFR takeoff prescribed for that airport under part 97 of this chapter. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts:

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

(2) For aircraft having more than two engines—½ statute mile visibility.

(3) For helicopters—1/2 statute mile visibility.

(g) *Military airports.* Unless otherwise prescribed by the Administrator, each person operating a civil aircraft under IFR into or out of a military airport shall comply with the instrument approach procedures and the takeoff and landing

minimum prescribed by the military authority having jurisdiction of that airport.

(h) *Comparable values of RVR and ground visibility.* (1) Except for Category II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum shall be converted to ground visibility in accordance with the table in paragraph (h)(2) of this section and shall be the visibility minimum for takeoff or landing on that runway.

RVR (feet)	Visibility (statute miles)
1,600	3/4
2,400	1/2
3,200	5/8
4,000	3/4
4,500	7/8
5,000	1
6,000	1 1/4

(i) *Operations on unpublished routes and use of radar in instrument approach procedures.* When radar is approved at certain locations for ATC purposes, it may be used not only for surveillance and precision radar approaches, as applicable, but also may be used in conjunction with instrument approach procedures predicated on other types of radio navigational aids. Radar vectors may be authorized to provide course guidance through the segments of an approach to the final course or fix. When operating on an unpublished route or while being radar vectored, the pilot, when an approach clearance is received, shall, in addition to complying with § 91.177, maintain the last altitude assigned to that pilot until the aircraft is established on a segment of a published route or instrument approach procedure unless a different altitude is assigned by ATC. After the aircraft is so established, published altitudes apply to descent within each succeeding route or approach segment unless a different altitude is assigned by ATC. Upon reaching the final approach course or fix, the pilot may either complete the instrument approach in accordance with a procedure approved for the facility or continue a surveillance or precision radar approach to a landing.

(j) *Limitation on procedure turns.* In the case of a radar vector to a final approach course or fix, a timed approach from a holding fix, or an approach for which the procedure specifies "No PT," no pilot may make a procedure turn unless cleared to do so by ATC.

(k) *ILS components.* The basic ground components of an ILS are the localizer, glide slope, outer marker, middle marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. A compass locator or precision radar may be substituted for the outer or middle marker. DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure or surveillance radar may be substituted for the outer marker. Applicability of, and substitution for, the inner marker for Category II or III approaches is determined by the appropriate part 97 approach procedure, letter of authorization, or operations specification pertinent to the operations.

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in Parts 95 and 97 of this chapter; or

(2) If no applicable minimum altitude is prescribed in those parts—

(i) In the case of operations over an area designated as a mountainous area in part 95, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, when within 22 nautical miles of the VOR concerned (based on the pilot's reasonable estimate of that distance).

(b) *Climb.* Climb to a higher minimum IFR altitude shall begin immediately after passing the point beyond which that minimum altitude applies, except that when ground obstructions intervene, the point beyond which that higher minimum altitude applies shall be crossed at or above the applicable MCA.

§ 91.179 IFR cruising altitude or flight level.

(a) *In controlled airspace.* Each person operating an aircraft under IFR in level cruising flight in controlled airspace shall maintain the altitude or flight level assigned that aircraft by ATC. However, if the ATC clearance

assigns "VFR conditions on-top," that person shall maintain an altitude or flight level as prescribed by § 91.159.

(b) *In uncontrolled airspace.* Except while in a holding pattern of 2 minutes or less or while turning, each person operating an aircraft under IFR in level cruising flight in uncontrolled airspace shall maintain an appropriate altitude as follows:

(1) When operating below 18,000 feet MSL and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude (such as 3,000, 5,000, or 7,000); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude (such as 2,000, 4,000, or 6,000).

(2) When operating at or above 18,000 feet MSL but below flight level 290, and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level (such as 190, 210, or 230); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level (such as 180, 200, or 220).

(3) When operating at flight level 290 and above, and—

(i) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 290 (such as flight level 290, 330, or 370); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 310 (such as flight level 310, 350, or 390).

§ 91.181 Course to be flown.

Unless otherwise authorized by ATC, no person may operate an aircraft within controlled airspace under IFR except as follows:

(a) On a Federal airway, along the centerline of that airway.

(b) On any other route, along the direct course between the navigational aids or fixes defining that route. However, this section does not prohibit maneuvering the aircraft to pass well clear of other air traffic or the maneuvering of the aircraft in VFR conditions to clear the intended flight path both before and during climb or descent.

§ 91.183 IFR radio communications.

The pilot in command of each aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible—

(a) The time and altitude of passing each designated reporting point, or the

reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(b) Any unforecast weather conditions encountered; and

(c) Any other information relating to the safety of flight.

§ 91.185 IFR operations: Two-way radio communications failure.

(a) *General.* Unless otherwise authorized by ATC, each pilot who has two-way radio communications failure when operating under IFR shall comply with the rules of this section.

(b) *VFR conditions.* If the failure occurs in VFR conditions, or if VFR conditions are encountered after the failure, each pilot shall continue the flight under VFR and land as soon as practicable.

(c) *IFR conditions.* If the failure occurs in IFR conditions, or if paragraph (b) of this section cannot be complied with, each pilot shall continue the flight according to the following:

(1) *Route.* (i) By the route assigned in the last ATC clearance received;

(ii) If being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) In the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) In the absence of an assigned route or a route that ATC has advised may be expected in a further clearance, by the route filed in the flight plan.

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segment being flown:

(i) The altitude or flight level assigned in the last ATC clearance received;

(ii) The minimum altitude (converted, if appropriate, to minimum flight level as prescribed in § 91.121(c)) for IFR operations; or

(iii) The altitude or flight level ATC has advised may be expected in a further clearance.

(3) *Leave clearance limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect-further-clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect-further-clearance time if one has been received, or if none has been received, upon

arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

§ 91.187 Operation under IFR in controlled airspace: Malfunction reports.

(a) The pilot in command of each aircraft operated in controlled airspace under IFR shall report as soon as practical to ATC any malfunctions of navigational, approach, or communication equipment occurring in flight.

(b) In each report required by paragraph (a) of this section, the pilot in command shall include the—

(1) Aircraft identification;

(2) Equipment affected;

(3) Degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(4) Nature and extent of assistance desired from ATC.

§ 91.189 Category II and III operations: General operating rules.

(a) No person may operate a civil aircraft in a Category II or III operation unless—

(1) The flight crew of the aircraft consists of a pilot in command and a second in command who hold the appropriate authorizations and ratings prescribed in § 61.3 of this chapter;

(2) Each flight crewmember has adequate knowledge of, and familiarity with, the aircraft and the procedures to be used; and

(3) The instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system that is being used.

(b) Unless otherwise authorized by the Administrator, no person may operate a civil aircraft in a Category II or Category III operation unless each ground component required for that operation and the related airborne equipment is installed and operating.

(c) *Authorized DH.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH, the authorized DH is the highest of the following:

(1) The DH prescribed by the approach procedure.

(2) The DH prescribed for the pilot in command.

(3) The DH for which the aircraft is equipped.

(d) Unless otherwise authorized by the Administrator, no pilot operating an aircraft in a Category II or Category III

approach that provides and requires use of a DH may continue the approach below the authorized decision height unless the following conditions are met:

(1) The aircraft is in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and where that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing.

(2) At least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.

(iii) The threshold markings.

(iv) The threshold lights.

(v) The touchdown zone or touchdown zone markings.

(vi) The touchdown zone lights.

(e) Unless otherwise authorized by the Administrator, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, prior to touchdown, the requirements of paragraph (d) of this section are not met.

(f) No person operating an aircraft using a Category III approach without decision height may land that aircraft except in accordance with the provisions of the letter of authorization issued by the Administrator.

(g) Paragraphs (a) through (f) of this section do not apply to operations conducted by the holders of certificates issued under part 121, 125, 129, or 135 of this chapter. No person may operate a civil aircraft in a Category II or Category III operation conducted by the holder of a certificate issued under part 121, 125, 129, or 135 of this chapter unless the operation is conducted in accordance with that certificate holder's operations specifications.

§ 91.191 Category II manual.

(a) No person may operate a civil aircraft of United States registry in a Category II operation unless—

(1) There is available in the aircraft a current, approved Category II manual for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in that manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II operation have been inspected and maintained in

accordance with the maintenance program contained in that manual.

(b) Each operator shall keep a current copy of the approved manual at its principal base of operations and shall make it available for inspection upon request of the Administrator.

(c) This section does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.193 Certificate of authorization for certain Category II operations.

The Administrator may issue a certificate of authorization authorizing deviations from the requirements of §§ 91.189, 91.191, and 91.205(f) for the operation of small aircraft identified as Category A aircraft in § 97.3 of this chapter in Category II operations if the Administrator finds that the proposed operation can be safely conducted under the terms of the certificate. Such authorization does not permit operation of the aircraft carrying persons or property for compensation or hire.

§§ 91.195-91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

§ 91.201 [Reserved]

§ 91.203 Civil aircraft: Certifications required.

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by parts 121 and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization under § 91.811) must have on it the registration number assigned to the aircraft under part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special identification number, that has been affixed to an aircraft, may only be obtained upon application to an FAA Flight Standards district office.

(2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the

second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

(b) No person may operate a civil aircraft unless the airworthiness certificate required by paragraph (a) of this section or a special flight authorization issued under § 91.715 is displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

(a) *General.* Except as provided in paragraphs (c)(3) and (e) of this section, no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs (or FAA-approved equivalents) for that type of operation, and those instruments and items of equipment are in operable condition.

(b) *Visual-flight rules (day).* For VFR flight during the day, the following instruments and equipment are required:

- (1) Airspeed indicator.
- (2) Altimeter.
- (3) Magnetic direction indicator.
- (4) Tachometer for each engine.
- (5) Oil pressure gauge for each engine using pressure system.
- (6) Temperature gauge for each liquid-cooled engine.
- (7) Oil temperature gauge for each air-cooled engine.
- (8) Manifold pressure gauge for each altitude engine.
- (9) Fuel gauge indicating the quantity of fuel in each tank.
- (10) Landing gear position indicator, if the aircraft has a retractable landing gear.

(11) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and at least one pyrotechnic signaling device. As used in this section, "shore" means that area of the land adjacent to the water which is above the high water mark and excludes land

areas which are intermittently under water.

(12) Except as to airships, an approved safety belt with an approved metal-to-metal latching device for each occupant 2 years of age or older.

(13) For small civil airplanes manufactured after July 18, 1978, an approved shoulder harness for each front seat. The shoulder harness must be designed to protect the occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. Each shoulder harness installed at a flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. For purposes of this paragraph—

(i) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(ii) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

(14) An emergency locator transmitter, if required by § 91.207.

(15) For normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of 9 or less, manufactured after December 12, 1986, a shoulder harness for—

(i) Each front seat that meets the requirements of § 23.785 (g) and (h) of this chapter in effect on December 12, 1985;

(ii) Each additional seat that meets the requirements of § 23.785(g) of this chapter in effect on December 12, 1985.

(c) *Visual flight rules (night)*. For VFR flight at night, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section.

(2) Approved position lights.

(3) An approved aviation red or aviation white anticollision light system on all U.S.-registered civil aircraft. Anticollision light systems initially installed after August 11, 1971, on aircraft for which a type certificate was issued or applied for before August 11, 1971, must at least meet the anticollision light standards of part 23, 25, 27, or 29 of this chapter, as applicable, that were in effect on August 10, 1971, except that the color may be either aviation red or aviation white. In the event of failure of any light of the anticollision light system, operations with the aircraft may be continued to a stop where repairs or replacement can be made.

(4) If the aircraft is operated for hire, one electric landing light.

(5) An adequate source of electrical energy for all installed electrical and radio equipment.

(6) One spare set of fuses, or three spare fuses of each kind required, that are accessible to the pilot in flight.

(d) *Instrument flight rules*. For IFR flight, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section, and, for night flight, instruments and equipment specified in paragraph (c) of this section.

(2) Two-way radio communications system and navigational equipment appropriate to the ground facilities to be used.

(3) Gyroscopic rate-of-turn indicator, except on the following aircraft:

(i) Large airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch and roll and installed in accordance with § 121.305(j) of this chapter; and

(ii) Rotorcraft with a third attitude instrument system usable through flight attitudes of ± 80 degrees of pitch and ± 120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(4) Slip-skid indicator.

(5) Sensitive altimeter adjustable for barometric pressure.

(6) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

(7) Generator or alternator of adequate capacity.

(8) Gyroscopic pitch and bank indicator (artificial horizon).

(9) Gyroscopic direction indicator (directional gyro or equivalent).

(e) *Flight at and above 24,000 ft. MSL (FL 240)*. If VOR navigational equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 240 unless that aircraft is equipped with approved distance measuring equipment (DME). When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately, and then may continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made.

(f) *Category II operations*. For Category II operations the instruments and equipment specified in paragraph (d) of this section and appendix A to this part are required. This paragraph does not apply to operations conducted by the holder of a certificate issued under part 121 of this chapter.

§ 91.207 Emergency locator transmitters.

(a) Except as provided in paragraphs (d) and (e) of this section, no person may operate a U.S.-registered civil airplane unless—

(1) There is attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO-C91 for the following operations:

(i) Those operations governed by the supplemental air carrier and commercial operator rules of parts 121 and 125;

(ii) Charter flights governed by the domestic and flag air carrier rules of part 121 of this chapter; and

(iii) Operations governed by part 135 of this chapter; or

(2) For operations other than those specified in paragraph (a)(1)(i) of this section, there must be attached to the airplane a personal type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO-C91.

(b) Each emergency locator transmitter required by paragraph (a) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter in the event of crash impact is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(c) Batteries used in the emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced (or recharged, if the batteries are rechargeable)—

(1) When the transmitter has been in use for more than 1 cumulative hour; or

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge), as established by the transmitter manufacturer under TSO-C91, paragraph (g)(2) of this section, has expired.

The new expiration date for replacing (or recharging) the battery must be legibly marked on the outside of the transmitter and entered in the aircraft maintenance record. Paragraph (c)(2) of this section does not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

(d) Notwithstanding paragraph (a) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry an airplane with an inoperative emergency locator

transmitter from a place where repairs or replacements cannot be made to a place where they can be made.

No person other than required crewmembers may be carried aboard an airplane being ferried under paragraph (d) of this section.

(e) Paragraph (a) of this section does not apply to—

- (1) Turbojet-powered aircraft;
- (2) Aircraft while engaged in scheduled flights by scheduled air carriers;
- (3) Aircraft while engaged in training operations conducted entirely within a 50-nautical mile radius of the airport from which such local flight operations began;
- (4) Aircraft while engaged in flight operations incident to design and testing;
- (5) New aircraft while engaged in flight operations incident to their manufacture, preparation, and delivery;
- (6) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;
- (7) Aircraft certificated by the Administrator for research and development purposes;
- (8) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys;
- (9) Aircraft equipped to carry not more than one person; and
- (10) An aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification, or replacement, subject to the following:
 - (i) No person may operate the aircraft unless the aircraft records contain an entry which includes the date of initial removal, the make, model, serial number, and reason for removing the transmitter, and a placard located in view of the pilot to show "ELT not installed."
 - (ii) No person may operate the aircraft more than 90 days after the ELT is initially removed from the aircraft.

§ 91.209 Aircraft lights.

No person may, during the period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon)—

- (a) Operate an aircraft unless it has lighted position lights;
- (b) Park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—
 - (1) Is clearly illuminated;
 - (2) Has lighted position lights; or

(3) Is in an area which is marked by obstruction lights;

(c) Anchor an aircraft unless the aircraft—

- (1) Has lighted anchor lights; or
- (2) Is in an area where anchor lights are not required on vessels; or
- (d) Operate an aircraft, required by § 91.205(c)(3) to be equipped with an anticollision light system, unless it has approved and lighted aviation red or aviation white anticollision lights. However, the anticollision lights need not be lighted when the pilot in command determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

§ 91.211 Supplemental oxygen.

(a) General. No person may operate a civil aircraft of U.S. registry—

- (1) At cabin pressure altitudes above 12,500 feet (MSL) up to and including 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration;
 - (2) At cabin pressure altitudes above 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen during the entire flight time at those altitudes; and
 - (3) At cabin pressure altitudes above 15,000 feet (MSL) unless each occupant of the aircraft is provided with supplemental oxygen.
- (b) Pressurized cabin aircraft. (1) No person may operate a civil aircraft of U.S. registry with a pressurized cabin—
- (i) At flight altitudes above flight level 250 unless at least a 10-minute supply of supplemental oxygen, in addition to any oxygen required to satisfy paragraph (a) of this section, is available for each occupant of the aircraft for use in the event that a descent is necessitated by loss of cabin pressurization; and
 - (ii) At flight altitudes above flight level 350 unless one pilot at the controls of the airplane is wearing and using an oxygen mask that is secured and sealed and that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude of the airplane exceeds 14,000 feet (MSL), except that the one pilot need not wear and use an oxygen mask while at or below flight level 410 if there are two pilots at the controls and each pilot has a quick-donning type of oxygen mask that can be placed on the face with one hand from the ready position within 5 seconds, supplying oxygen and properly secured and sealed.

- (2) Notwithstanding paragraph (b)(1)(ii) of this section, if for any reason at any time it is necessary for one pilot

to leave the controls of the aircraft when operating at flight altitudes above flight level 350, the remaining pilot at the controls shall put on and use an oxygen mask until the other pilot has returned to that crewmember's station.

§ 91.213 Inoperative instruments and equipment.

(a) Except as provided in paragraph (d) of this section, no person may take off an aircraft with inoperative instruments or equipment installed unless the following conditions are met:

- (1) An approved Minimum Equipment List exists for that aircraft.
- (2) The aircraft has within it a letter of authorization, issued by the FAA Flight Standards district office having jurisdiction over the area in which the operator is located, authorizing operation of the aircraft under the Minimum Equipment List. The letter of authorization may be obtained by written request of the airworthiness certificate holder. The Minimum Equipment List and the letter of authorization constitute a supplemental type certificate for the aircraft.
- (3) The approved Minimum Equipment List must—

- (i) Be prepared in accordance with the limitations specified in paragraph (b) of this section; and
 - (ii) Provide for the operation of the aircraft with the instruments and equipment in an inoperable condition.
- (4) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.
- (5) The aircraft is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the letter authorizing the use of the list.

(b) The following instruments and equipment may not be included in a Minimum Equipment List:

- (1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.
- (2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.
- (3) Instruments and equipment required for specific operations by this part.
- (c) A person authorized to use an approved Minimum Equipment List issued for a specific aircraft under Part 121, 125, or 135 of this chapter shall use

that Minimum Equipment List in connection with operations conducted with that aircraft under this part without additional approval requirements.

(d) Except for operations conducted in accordance with paragraph (a) or (c) of this section, a person may takeoff an aircraft in operations conducted under this part with inoperative instruments and equipment without an approved Minimum Equipment List provided—

(1) The flight operation is conducted in a—

(i) Rotorcraft, nonturbine-powered airplane, glider, or lighter-than-air aircraft for which a master Minimum Equipment List has not been developed; or

(ii) Small rotorcraft, nonturbine-powered small airplane, glider, or lighter-than-air aircraft for which a Master Minimum Equipment List has been developed; and

(2) The inoperative instruments and equipment are not—

(i) Part of the VFR-day type certification instruments and equipment prescribed in the applicable airworthiness regulations under which the aircraft was type certificated;

(ii) Indicated as required on the aircraft's equipment list, or on the Kinds of Operations Equipment List for the kind of flight operation being conducted;

(iii) Required by § 91.205 or any other rule of this part for the specific kind of flight operation being conducted; or

(iv) Required to be operational by an airworthiness directive; and

(3) The inoperative instruments and equipment are—

(i) Removed from the aircraft, the cockpit control placarded, and the maintenance recorded in accordance with § 43.9 of this chapter; or

(ii) Deactivated and placarded "Inoperative." If deactivation of the inoperative instrument or equipment involves maintenance, it must be accomplished and recorded in accordance with part 43 of this chapter; and

(4) A determination is made by a pilot, who is certificated and appropriately rated under part 61 of this chapter, or by a person, who is certificated and appropriately rated to perform maintenance on the aircraft, that the inoperative instrument or equipment does not constitute a hazard to the aircraft.

An aircraft with inoperative instruments or equipment as provided in paragraph (d) of this section is considered to be in a properly altered condition acceptable to the Administrator.

(e) Notwithstanding any other provision of this section, an aircraft with

inoperable instruments or equipment may be operated under a special flight permit issued in accordance with §§ 21.197 and 21.199 of this chapter.

§ 91.215 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under part 121, 127 or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's.

(1) *Through July 1, 1992:*

(i) Any class of TSO-C74b or any class of TSO-C74c as appropriate, provided that the equipment was manufactured before January 1, 1991; or

(ii) The appropriate class of TSO-C112 (Mode S).

(2) *After July 1, 1992:* The appropriate class of TSO-C112 (Mode S). For purposes of paragraph (a)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO-C74b or TSO-C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

(b) *All airspace.* No person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C-112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In terminal control areas and positive control areas;

(2) *Effective July 1, 1989—All aircraft.* In all airspace within 30 nautical miles of a terminal control area primary airport from the surface upward to 10,000 feet MSL;

(3) *Effective July 1, 1989.*

Notwithstanding paragraph (b)(2) of this

section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider may conduct operations in the airspace within 30 nautical miles of a terminal control area primary airport provided such operations are conducted—

(i) Outside any terminal control area and positive control area; and

(ii) Below the altitude of the terminal control area ceiling or 10,000 feet MSL whichever is lower; and

(4) *Effective December 30, 1990—All aircraft.* (i) In the airspace of an airport radar service area, and

(ii) In all airspace above the ceiling and within the lateral boundaries of an airport radar service area upward to 10,000 feet MSL; and

(5) *All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider.* (i) In all airspace of the 48 contiguous states and the District of Columbia:

(A) *Through June 30, 1989.* Above 12,500 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL.

(B) *Effective July 1, 1989.* At and above 10,000 feet MSL and below the floor of a positive control area, excluding the airspace at and below 2,500 feet AGL; and

(ii) *Effective December 30, 1990.* In the airspace from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in Appendix D of this part excluding the airspace below 1,200 feet AGL outside of the airport traffic area for that airport.

(c) *Transponder-on operation.* While in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.413 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

(d) *ATC authorized deviations.* ATC may authorize deviations from paragraph (b) of this section—

(1) Immediately, to allow an aircraft with an inoperative transponder to continue to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both;

(2) Immediately, for operations of aircraft with an operating transponder

but without operating automatic pressure altitude reporting equipment having a Mode C capability; and

(3) On a continuing basis, or for individual flights, for operations of aircraft without a transponder, in which case the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least one hour before the proposed operation.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder—

(a) When deactivation of that equipment is directed by ATC;

(b) Unless, as installed, that equipment was tested and calibrated to transmit altitude data corresponding within 125 feet (on a 95 percent probability basis) of the indicated or calibrated datum of the altimeter normally used to maintain flight altitude, with that altimeter referenced to 29.92 inches of mercury for altitudes from sea level to the maximum operating altitude of the aircraft; or

(c) Unless the altimeters and digitizers in that equipment meet the standards of TSO-C10b and TSO-C88, respectively.

§ 91.219 Altitude alerting system or device: Turbojet-powered civil airplanes.

(a) Except as provided in paragraph (d) of this section, no person may operate a turbojet-powered U.S.-registered civil airplane unless that airplane is equipped with an approved altitude alerting system or device that is in operable condition and meets the requirements of paragraph (b) of this section.

(b) Each altitude alerting system or device required by paragraph (a) of this section must be able to—

(1) Alert the pilot—

(i) Upon approaching a preselected altitude in either ascent or descent, by a sequence of both aural and visual signals in sufficient time to establish level flight at that preselected altitude; or

(ii) Upon approaching a preselected altitude in either ascent or descent, by a sequence of visual signals in sufficient time to establish level flight at that preselected altitude, and when deviating above and below that preselected altitude, by an aural signal;

(2) Provide the required signals from sea level to the highest operating

altitude approved for the airplane in which it is installed;

(3) Preselect altitudes in increments that are commensurate with the altitudes at which the aircraft is operated;

(4) Be tested without special equipment to determine proper operation of the alerting signals; and

(5) Accept necessary barometric pressure settings if the system or device operates on barometric pressure.

However, for operation below 3,000 feet AGL, the system or device need only provide one signal, either visual or aural, to comply with this paragraph. A radio altimeter may be included to provide the signal if the operator has an approved procedure for its use to determine DH or MDA, as appropriate.

(c) Each operator to which this section applies must establish and assign procedures for the use of the altitude alerting system or device and each flight crewmember must comply with those procedures assigned to him.

(d) Paragraph (a) of this section does not apply to any operation of an airplane that has an experimental certificate or to the operation of any airplane for the following purposes:

(1) Ferrying a newly acquired airplane from the place where possession of it was taken to a place where the altitude alerting system or device is to be installed.

(2) Continuing a flight as originally planned, if the altitude alerting system or device becomes inoperative after the airplane has taken off; however, the flight may not depart from a place where repair or replacement can be made.

(3) Ferrying an airplane with any inoperative altitude alerting system or device from a place where repairs or replacements cannot be made to a place where it can be made.

(4) Conducting an airworthiness flight test of the airplane.

(5) Ferrying an airplane to a place outside the United States for the purpose of registering it in a foreign country.

(6) Conducting a sales demonstration of the operation of the airplane.

(7) Training foreign flight crews in the operation of the airplane before ferrying it to a place outside the United States for the purpose of registering it in a foreign country.

§ 91.221 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.* Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

§§ 91.223-91.299 [Reserved]

Subpart D—Special Flight Operations

§ 91.301 [Reserved]

§ 91.303 Aerobatic flight.

No person may operate an aircraft in aerobatic flight—

(a) Over any congested area of a city, town, or settlement;

(b) Over an open air assembly of persons;

(c) Within a control zone or Federal airway;

(d) Below an altitude of 1,500 feet above the surface; or

(e) When flight visibility is less than 3 statute miles.

For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

§ 91.305 Flight test areas.

No person may flight test an aircraft except over open water, or sparsely populated areas, having light air traffic.

§ 91.307 Parachutes and parachuting.

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and—

(1) If a chair type (canopy in back), it has been packed by a certificated and appropriately rated parachute rigger within the preceding 120 days; or

(2) If any other type, it has been packed by a certificated and appropriately rated parachute rigger—

(i) Within the preceding 120 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(ii) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber, or materials not specified in paragraph (a)(2)(i) of this section.

(b) Except in an emergency, no pilot in command may allow, and no person may make, a parachute jump from an aircraft within the United States except in accordance with Part 105.

(c) Unless each occupant of the aircraft is wearing an approved parachute, no pilot of a civil aircraft carrying any person (other than a crewmember) may execute any intentional maneuver that exceeds—

(1) A bank of 60 degrees relative to the horizon; or

(2) A nose-up or nose-down attitude of 30 degrees relative to the horizon.

(d) Paragraph (c) of this section does not apply to—

(1) Flight tests for pilot certification or rating; or

(2) Spins and other flight maneuvers required by the regulations for any certificate or rating when given by—

(i) A certificated flight instructor; or
(ii) An airline transport pilot instructing in accordance with § 61.169 of this chapter.

(e) For the purposes of this section, "approved parachute" means—

(1) A parachute manufactured under a type certificate or a technical standard order (C-23 series); or

(2) A personnel-carrying military parachute identified by an NAF, AAF, or AN drawing number, an AAF order number, or any other military designation or specification number.

§ 91.309 Towing: Gliders.

(a) No person may operate a civil aircraft towing a glider unless—

(1) The pilot in command of the towing aircraft is qualified under § 61.69 of this chapter;

(2) The towing aircraft is equipped with a tow-hitch of a kind, and installed in a manner, that is approved by the Administrator;

(3) The towline used has breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not more than twice this operating weight. However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider if—

(i) A safety link is installed at the point of attachment of the towline to the glider with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not greater than twice this operating weight.

(ii) A safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider end of the towline and not greater than twice the maximum certificated operating weight of the glider;

(4) Before conducting any towing operation within a control zone, or

before making each towing flight within a control zone if required by ATC, the pilot in command notifies the control tower if one is in operation in that control zone. If such a control tower is not in operation, the pilot in command must notify the FAA Flight Service Station serving the control zone before conducting any towing operation in that control zone; and

(5) The pilots of the towing aircraft and the glider have agreed upon a general course of action, including takeoff and release signals, airspeeds, and emergency procedures for each pilot.

(b) No pilot of a civil aircraft may intentionally release a towline, after release of a glider, in a manner that endangers the life or property of another.

§ 91.311 Towing: Other than under § 91.309.

No pilot of a civil aircraft may tow anything with that aircraft (other than under § 91.309) except in accordance with the terms of a certificate of waiver issued by the Administrator.

§ 91.313 Restricted category civil aircraft: Operating limitations.

(a) No person may operate a restricted category civil aircraft—

(1) For other than the special purpose for which it is certificated; or

(2) In an operation other than one necessary to accomplish the work activity directly associated with that special purpose.

(b) For the purpose of paragraph (a) of this section, operating a restricted category civil aircraft to provide flight crewmember training in a special purpose operation for which the aircraft is certificated is considered to be an operation for that special purpose.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph, a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the carrying of required persons or material to the location of that operation), and operation for the purpose of providing flight crewmember training in a special purpose operation, are not considered to be the carriage of persons or property for compensation or hire.

(d) No person may be carried on a restricted category civil aircraft unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or

(4) Is necessary to accomplish the work activity directly associated with that special purpose.

(e) Except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States—

(1) Over a densely populated area;

(2) In a congested airway; or

(3) Near a busy airport where passenger transport operations are conducted.

(f) This section does not apply to nonpassenger-carrying civil rotorcraft external-load operations conducted under Part 133 of this chapter.

(g) No person may operate a small restricted-category civil airplane manufactured after July 18, 1978, unless an approved shoulder harness is installed for each front seat. The shoulder harness must be designed to protect each occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. The shoulder harness installation at each flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operation. For purposes of this paragraph—

(1) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(2) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

§ 91.315 Limited category civil aircraft: Operating limitations.

No person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

§ 91.317 Provisionally certificated civil aircraft: Operating limitations.

(a) No person may operate a provisionally certificated civil aircraft unless that person is eligible for a provisional airworthiness certificate under § 21.213 of this chapter.

(b) No person may operate a provisionally certificated civil aircraft outside the United States unless that person has specific authority to do so from the Administrator and each foreign country involved.

(c) Unless otherwise authorized by the Director of Airworthiness, no person may operate a provisionally certificated civil aircraft in air transportation.

(d) Unless otherwise authorized by the Administrator, no person may operate a provisionally certificated civil aircraft except—

(1) In direct conjunction with the type or supplemental type certification of that aircraft;

(2) For training flight crews, including simulated air carrier operations;

(3) Demonstration flight by the manufacturer for prospective purchasers;

(4) Market surveys by the manufacturer;

(5) Flight checking of instruments, accessories, and equipment that do not affect the basic airworthiness of the aircraft; or

(6) Service testing of the aircraft.

(e) Each person operating a provisionally certificated civil aircraft shall operate within the prescribed limitations displayed in the aircraft or set forth in the provisional aircraft flight manual or other appropriate document. However, when operating in direct conjunction with the type or supplemental type certification of the aircraft, that person shall operate under the experimental aircraft limitations of § 21.191 of this chapter and when flight testing, shall operate under the requirements of § 91.305 of this part.

(f) Each person operating a provisionally certificated civil aircraft shall establish approved procedures for—

(1) The use and guidance of flight and ground personnel in operating under this section; and

(2) Operating in and out of airports where takeoffs or approaches over populated areas are necessary. No person may operate that aircraft except in compliance with the approved procedures.

(g) Each person operating a provisionally certificated civil aircraft shall ensure that each flight crewmember is properly certificated and has adequate knowledge of, and familiarity with, the aircraft and procedures to be used by that crewmember.

(h) Each person operating a provisionally certificated civil aircraft shall maintain it as required by applicable regulations and as may be specially prescribed by the Administrator.

(i) Whenever the manufacturer, or the Administrator, determines that a change in design, construction, or operation is necessary to ensure safe operation, no person may operate a provisionally

certificated civil aircraft until that change has been made and approved. Section 21.99 of this chapter applies to operations under this section.

(j) Each person operating a provisionally certificated civil aircraft—

(1) May carry in that aircraft only persons who have a proper interest in the operations allowed by this section or who are specifically authorized by both the manufacturer and the Administrator; and

(2) Shall advise each person carried that the aircraft is provisionally certificated.

(k) The Administrator may prescribe additional limitations or procedures that the Administrator considers necessary, including limitations on the number of persons who may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) No person may operate an aircraft that has an experimental certificate—

(1) For other than the purpose for which the certificate was issued; or

(2) Carrying persons or property for compensation or hire.

(b) No person may operate an aircraft that has an experimental certificate outside of an area assigned by the Administrator until it is shown that—

(1) The aircraft is controllable throughout its normal range of speeds and throughout all the maneuvers to be executed; and

(2) The aircraft has no hazardous operating characteristics or design features.

(c) Unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

(d) Each person operating an aircraft that has an experimental certificate shall—

(1) Advise each person carried of the experimental nature of the aircraft;

(2) Operate under VFR, day only, unless otherwise specifically authorized by the Administrator; and

(3) Notify the control tower of the experimental nature of the aircraft when

operating the aircraft into or out of airports with operating control towers.

(e) The Administrator may prescribe additional limitations that the Administrator considers necessary, including limitations on the persons that may be carried in the aircraft.

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§ 91.321 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of part 121, 125, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commercial operator;

(2) The carriage is conducted under the rules of this part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR *et seq.*).

(b) For the purposes of this section, the terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

§ 91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.

(a) Notwithstanding any other provision of the Federal Aviation Regulations, the Administrator will approve, as provided in this section, an increase in the maximum certificated weight of an airplane type certificated under Aeronautics Bulletin No. 7-A of the U.S. Department of Commerce dated January 1, 1931, as amended, or under the normal category of part 4a of the former Civil Air Regulations (14 CFR Part 4a, 1964 ed.) if that airplane is operated in the State of Alaska by—

(1) An air taxi operator or other air carrier; or

(2) The U.S. Department of Interior in conducting its game and fish law enforcement activities or its management, fire 1 detection, and fire suppression activities concerning public lands.

(b) The maximum certificated weight approved under this section may not exceed—

(1) 12,500 pounds;

(2) 115 percent of the maximum weight listed in the FAA aircraft specifications;

(3) The weight at which the airplane meets the positive maneuvering load

factor requirement for the normal category specified in § 23.337 of this chapter; or

(4) The weight at which the airplane meets the climb performance requirements under which it was type certificated.

(c) In determining the maximum certificated weight, the Administrator considers the structural soundness of the airplane and the terrain to be traversed.

(d) The maximum certificated weight determined under this section is added to the airplane's operation limitations and is identified as the maximum weight authorized for operations within the State of Alaska.

§ 91.325-91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.401 Applicability.

(a) This subpart prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-registered civil aircraft operating within or outside of the United States.

(b) Sections 91.405, 91.409, 91.411, 91.417, and 91.419 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, 127, 129, or § 135.411(a)(2) of this chapter.

(c) Sections 91.405 and 91.409 of this part do not apply to an airplane inspected in accordance with part 125 of this chapter.

§ 91.403 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with part 39 of this chapter.

(b) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including part 43 of this chapter.

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the mandatory replacement times, inspection intervals, and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under part 121, 127 or 135 of this chapter or in accordance with an inspection program approved under § 91.409(e) have been complied with.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft—

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service;

(c) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) of this part, repaired, replaced, removed, or inspected at the next required inspection; and

(d) When listed discrepancies include inoperative instruments or equipment, shall ensure that a placard has been installed as required by § 43.11 of this chapter.

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

(b) No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

(c) The aircraft does not have to be flown as required by paragraph (b) of this section if, prior to flight, ground tests, inspection, or both show conclusively that the maintenance, preventive maintenance, rebuilding, or alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the preceding 12 calendar months, it has had—

(1) An annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter; or

(2) An inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter.

No inspection performed under paragraph (b) of this section may be substituted for any inspection required by this paragraph unless it is performed by a person authorized to perform annual inspections and is entered as an "annual" inspection in the required maintenance records.

(b) Except as provided in paragraph (c) of this section, no person may operate an aircraft carrying any person (other than a crewmember) for hire, and no person may give flight instruction for hire in an aircraft which that person provides, unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter. The 100-hour limitation may be exceeded by not more than 10 hours while en route to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(c) Paragraphs (a) and (b) of this section do not apply to—

(1) An aircraft that carries a special flight permit, a current experimental certificate, or a provisional airworthiness certificate;

(2) An aircraft inspected in accordance with an approved aircraft inspection program under part 125, 127, or 135 of this chapter and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program;

(3) An aircraft subject to the requirements of paragraph (d) or (e) of this section; or

(4) Turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e) of this section.

(d) *Progressive inspection.* Each registered owner or operator of an

aircraft desiring to use a progressive inspection program must submit a written request to the FAA Flight Standards district office having jurisdiction over the area in which the applicant is located, and shall provide—

(1) A certificated mechanic holding an inspection authorization, a certificated airframe repair station, or the manufacturer of the aircraft to supervise or conduct the progressive inspection;

(2) A current inspection procedures manual available and readily understandable to pilot and maintenance personnel containing, in detail—

(i) An explanation of the progressive inspection, including the continuity of inspection responsibility, the making of reports, and the keeping of records and technical reference material;

(ii) An inspection schedule, specifying the intervals in hours or days when routine instructions for exceeding an inspection interval by not more than 10 hours while en route and for changing an inspection interval because of service experience;

(iii) Sample routine and detailed inspection forms and instructions for their use; and

(iv) Sample reports and records and instructions for their use;

(3) Enough housing and equipment for necessary disassembly and proper inspection of the aircraft; and

(4) Appropriate current technical information for the aircraft.

The frequency and detail of the progressive inspection shall provide for the complete inspection of the aircraft within each 12 calendar months and be consistent with the manufacturer's recommendations, field service experience, and the kind of operation in which the aircraft is engaged. The progressive inspection schedule must ensure that the aircraft, at all times, will be airworthy and will conform to all applicable FAA aircraft specifications, type certificate data sheets, airworthiness directives, and other approved data. If the progressive inspection is discontinued, the owner or operator shall immediately notify the local FAA Flight Standards district office, in writing, of the discontinuance. After the discontinuance, the first annual inspection under § 91.409(a)(1) is due within 12 calendar months after the last complete inspection of the aircraft under the progressive inspection. The 100-hour inspection under § 91.409(b) is due within 100 hours after that complete inspection. A complete inspection of the aircraft, for the purpose of determining when the annual and 100-hour inspections are due, requires a detailed

inspection of the aircraft and all its components in accordance with the progressive inspection. A routine inspection of the aircraft and a detailed inspection of several components is not considered to be a complete inspection.

(e) *Large airplanes (to which part 125 is not applicable); turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft.* No person may operate a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the airplane or turbine-powered rotorcraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with an inspection program selected under the provisions of paragraph (f) of this section, except that the owner or operator of a turbine-powered rotorcraft may elect to use the inspection provisions of § 91.409(a), (b), (c), or (d) in lieu of an inspection option of § 91.409(f).

(f) *Selection of inspection program under paragraph (e) of this section.* The registered owner or operator of each airplane or turbine-powered rotorcraft described in paragraph (e) of this section must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft:

(1) A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate or an operating certificate issued under part 121, 127, or 135 of this chapter and operating that make and model aircraft under part 121 of this chapter or operating that make and model under part 135 of this chapter and maintaining it under § 135.411(a)(2) of this chapter.

(2) An approved aircraft inspection program approved under § 135.419 of this chapter and currently in use by a person holding an operating certificate issued under part 135 of this chapter.

(3) A current inspection program recommended by the manufacturer.

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision of this inspection

program in accordance with the provisions of § 91.415.

Each operator shall include in the selected program the name and address of the person responsible for scheduling the inspections required by the program and make a copy of that program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(g) *Inspection program approved under paragraph (e) of this section.* Each operator of an airplane or turbine-powered rotorcraft desiring to establish or change an approved inspection program under paragraph (f)(4) of this section must submit the program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model airplane or turbine-powered rotorcraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the program expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

(h) *Changes from one inspection program to another.* When an operator changes from one inspection program under paragraph (f) of this section to another, the time in service, calendar times, or cycles of operation accumulated under the previous program must be applied in determining inspection due times under the new program.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) No person may operate an airplane, or helicopter, in controlled airspace under IFR unless—

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with appendix E of part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valves, following any opening and closing of the

static pressure system, that system has been tested and inspected and found to comply with paragraph (a), appendices E and F, of part 43 of this chapter; and

(3) Following installation or maintenance on the automatic pressure altitude reporting system of the ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(b) The tests required by paragraph (a) of this section must be conducted by—

(1) The manufacturer of the airplane, or helicopter, on which the tests and inspections are to be performed;

(2) A certificated repair station properly equipped to perform those functions and holding—

(i) An instrument rating, Class I;

(ii) A limited instrument rating appropriate to the make and model of appliance to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) An airframe rating appropriate to the airplane, or helicopter, to be tested; or

(v) A limited rating for a manufacturer issued for the appliance in accordance with § 145.101(b)(4) of this chapter; or

(3) A certificated mechanic with an airframe rating (static pressure system tests and inspections only).

(c) Altimeter and altitude reporting equipment approved under Technical Standard Orders are considered to be tested and inspected as of the date of their manufacture.

(d) No person may operate an airplane, or helicopter, in controlled airspace under IFR at an altitude above the maximum altitude at which all altimeters and the automatic altitude reporting system of that airplane, or helicopter, have been tested.

§ 91.413 ATC transponder tests and inspections.

(a) No persons may use an ATC transponder that is specified in 91.215(a), 121.345(c), 127.123(b), or § 135.143(c) of this chapter unless, within the preceding 24 calendar months, the ATC transponder has been tested and inspected and found to comply with appendix F of part 43 of this chapter; and

(b) Following any installation or maintenance on an ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), appendix E, of part 43 of this chapter.

(c) The tests and inspections specified in this section must be conducted by—

(1) A certificated repair station properly equipped to perform those functions and holding—

(i) A radio rating, Class III;

(ii) A limited radio rating appropriate to the make and model transponder to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) A limited rating for a manufacturer issued for the transponder in accordance with § 145.101(b)(4) of this chapter; or

(2) A holder of a continuous airworthiness maintenance program as provided in part 121, 127 or § 135.411(a)(2) of this chapter; or

(3) The manufacturer of the aircraft on which the transponder to be tested is installed, if the transponder was installed by that manufacturer.

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

(b) The owner or operator may petition the Administrator to reconsider the notice to make any changes in a program in accordance with paragraph (a) of this section.

(c) The petition must be filed with the FAA Flight Standards district office which requested the change to the program within 30 days after the certificate holder receives the notice.

(d) Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

§ 91.417 Maintenance records.

(a) Except for work performed in accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(1) Records of the maintenance, preventive maintenance, and alteration and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include—

(i) A description (or reference to data acceptable to the Administrator) of the work performed; and

(ii) The date of completion of the work performed; and

(iii) The signature, and certificate number of the person approving the aircraft for return to service.

(2) Records containing the following information:

(i) The total time in service of the airframe, each engine, each propeller, and each rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The current inspection status of the aircraft, including the time since the last inspection required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number, and revision date. If the AD involves recurring action, the time and date when the next action is required.

(vi) Copies of the forms prescribed by § 43.9(a) of this chapter for each major alteration to the airframe and currently installed engines, rotors, propellers, and appliances.

(b) The owner or operator shall retain the following records for the periods prescribed:

(1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after the work is performed.

(2) The records specified in paragraph (a)(2) of this section shall be retained and transferred with the aircraft at the time the aircraft is sold.

(3) A list of defects furnished to a registered owner or operator under § 43.11 of this chapter shall be retained until the defects are repaired and the aircraft is approved for return to service.

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to part 43 of this chapter, a copy of FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.419 Transfer of maintenance records.

Any owner or operator who sells a U.S.-registered aircraft shall transfer to the purchaser, at the time of sale, the following records of that aircraft, in plain language form or in coded form at the election of the purchaser, if the coded form provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 91.417(a)(2).

(b) The records specified in § 91.417(a)(1) which are not included in the records covered by paragraph (a) of this section, except that the purchaser may permit the seller to keep physical custody of such records. However, custody of records by the seller does not relieve the purchaser of the responsibility under § 91.417(c) to make the records available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB).

§ 91.421 Rebuilt engine maintenance records.

(a) The owner or operator may use a new maintenance record, without previous operating history, for an aircraft engine rebuilt by the manufacturer or by an agency approved by the manufacturer.

(b) Each manufacturer or agency that grants zero time to an engine rebuilt by it shall enter in the new record—

(1) A signed statement of the date the engine was rebuilt;

(2) Each change made as required by airworthiness directives; and

(3) Each change made in compliance with manufacturer's service bulletins, if the entry is specifically requested in that bulletin.

(c) For the purposes of this section, a rebuilt engine is a used engine that has been completely disassembled, inspected, repaired as necessary, reassembled, tested, and approved in the same manner and to the same tolerances and limits as a new engine with either new or used parts. However, all parts used in it must conform to the production drawing tolerances and limits for new parts or be of approved oversized or undersized dimensions for a new engine.

§§ 91.423-91.499 [Reserved]

Subpart F—Large and Turbine-Powered Multiengine Airplanes

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large and of turbojet-powered multiengine civil airplanes of U.S. registry. The operating rules in this subpart do not apply to those airplanes when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

(1) Ferry or training flights;

(2) Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations;

(3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section;

(4) Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation;

(5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company;

(6) The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange, or joint ownership agreement as defined in paragraph (c) of this section;

(7) The carriage of property (other than mail) on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air) when the carriage

is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section;

(8) The carriage on an airplane of an athletic team, sports group, choral group, or similar group having a common purpose or objective when there is no charge, assessment, or fee of any kind made by any person for that carriage; and

(9) The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling them land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment, or fee is made for that carriage.

(c) As used in this section—

(1) A "time sharing agreement" means an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section;

(2) An "interchange agreement" means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A "joint ownership agreement" means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hangar and tie-down costs away from the aircraft's base of operation.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section.

§ 91.503 Flying equipment and operating information.

(a) The pilot in command of an airplane shall ensure that the following flying equipment and aeronautical charts and data, in current and appropriate form, are accessible for each flight at the pilot station of the airplane:

(1) A flashlight having at least two size "D" cells, or the equivalent, that is in good working order.

(2) A cockpit checklist containing the procedures required by paragraph (b) of this section.

(3) Pertinent aeronautical charts.

(4) For IFR, VFR over-the-top, or night operations, each pertinent navigational en route, terminal area, and approach and letdown chart.

(5) In the case of multiengine airplanes, one-engine inoperative climb performance data.

(b) Each cockpit checklist must contain the following procedures and shall be used by the flight crewmembers when operating the airplane:

(1) Before starting engines.

(2) Before takeoff.

(3) Cruise.

(4) Before landing.

(5) After landing.

(6) Stopping engines.

(7) Emergencies.

(c) Each emergency cockpit checklist procedure required by paragraph (b)(7) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other procedures necessary for safety.

(d) The equipment, charts, and data prescribed in this section shall be used by the pilot in command and other members of the flight crew, when pertinent.

§ 91.505 Familiarity with operating limitations and emergency equipment.

(a) Each pilot in command of an airplane shall, before beginning a flight, become familiar with the Airplane Flight Manual for that airplane, if one is required, and with any placards, listings, instrument markings, or any combination thereof, containing each operating limitation prescribed for that airplane by the Administrator, including those specified in § 91.9(b).

(b) Each required member of the crew shall, before beginning a flight, become familiar with the emergency equipment installed on the airplane to which that crewmember is assigned and with the procedures to be followed for the use of that equipment in an emergency situation.

§ 91.507 Equipment requirements: Over-the-top or night VFR operations.

No person may operate an airplane over-the-top or at night under VFR unless that airplane is equipped with the instruments and equipment required for IFR operations under § 91.205(d) and one electric landing light for night operations. Each required instrument and item of equipment must be in operable condition.

§ 91.509 Survival equipment for overwater operations.

(a) No person may take off an airplane for a flight over water more than 50 nautical miles from the nearest shore unless that airplane is equipped with a life preserver or an approved flotation means for each occupant of the airplane.

(b) No person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

(1) A life preserver, equipped with an approved survivor locator light, for each occupant of the airplane.

(2) Enough liferafts (each equipped with an approved survival locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) At least one pyrotechnic signaling device for each liferaft.

(4) One self-buoyant, water-resistant, portable emergency radio signaling device that is capable of transmission on the appropriate emergency frequency or frequencies and not dependent upon the airplane power supply.

(5) A lifeline stored in accordance with § 25.1411(g) of this chapter.

(c) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(d) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(e) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

§ 91.511 Radio equipment for overwater operations.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has at least the following operable equipment:

(1) Radio communication equipment appropriate to the facilities to be used and able to transmit to, and receive from, any place on the route, at least one surface facility:

(i) Two transmitters.

(ii) Two microphones.

(iii) Two headsets or one headset and one speaker.

(iv) Two independent receivers.

(2) Appropriate electronic navigational equipment consisting of at least two independent electronic navigation units capable of providing the pilot with the information necessary to navigate the airplane within the airspace assigned by air traffic control. However, a receiver that can receive both communications and required navigational signals may be used in place of a separate communications receiver and a separate navigational signal receiver or unit.

(b) For the purposes of paragraphs (a)(1)(iv) and (a)(2) of this section, a receiver or electronic navigation unit is independent if the function of any part of it does not depend on the functioning of any part of another receiver or electronic navigation unit.

(c) Notwithstanding the provisions of paragraph (a) of this section, a person may operate an airplane on which no passengers are carried from a place where repairs or replacement cannot be made, if not more than one of each of the dual items of radio communication and navigational equipment specified in paragraphs (a)(1)(i) through (iv) and (a)(2) of this section malfunctions or becomes inoperative.

(d) Notwithstanding the provisions of paragraph (a) of this section, when both VHF and HF communications equipment are required for the route and the airplane has two VHF transmitters and two VHF receivers for communications, only one HF transmitter and one HF receiver is required for communications.

(e) As used in this section, the term "shore" means that area of the land adjacent to the water which is above the high-water mark and excludes land areas which are intermittently under water.

§ 91.513 Emergency equipment.

(a) No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of equipment—

(1) Must be inspected in accordance with § 91.409 to ensure its continued serviceability and immediate readiness for its intended purposes;

(2) Must be readily accessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) Hand fire extinguishers must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and located on or near the flight deck in a place that is readily accessible to the flight crew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than six but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in the passenger compartment of each airplane accommodating more than 30 passengers.

(4) Hand fire extinguishers must be installed and secured in such a manner that they will not interfere with the safe operation of the airplane or adversely affect the safety of the crew and passengers. They must be readily accessible and, unless the locations of the fire extinguishers are obvious, their stowage provisions must be properly identified.

(d) First aid kits for treatment of injuries likely to occur in flight or in minor accidents must be provided.

(e) Each airplane accommodating more than 19 passengers must be equipped with a crash axe.

(f) Each passenger-carrying airplane must have a portable battery-powered megaphone or megaphones readily accessible to the crewmembers assigned to direct emergency evacuation, installed as follows:

(1) One megaphone on each airplane with a seating capacity of more than 60 but less than 100 passengers, at the most rearward location in the passenger cabin where it would be readily accessible to a normal flight attendant seat. However, the Administrator may

grant a deviation from the requirements of this subparagraph if the Administrator finds that a different location would be more useful for evacuation of persons during an emergency.

(2) On each airplane with a seating capacity of 100 or more passengers, one megaphone installed at the forward end and one installed at the most rearward location where it would be readily accessible to a normal flight attendant seat.

§ 91.515 Flight altitude rules.

(a) Notwithstanding § 91.119, and except as provided in paragraph (b) of this section, no person may operate an airplane under VFR at less than—

(1) One thousand feet above the surface, or 1,000 feet from any mountain, hill, or other obstruction to flight, for day operations; and

(2) The altitudes prescribed in § 91.177, for night operations.

(b) This section does not apply—

(1) During takeoff or landing;

(2) When a different altitude is authorized by a waiver to this section under subpart J of this part; or

(3) When a flight is conducted under the special VFR weather minimums of § 91.157 with an appropriate clearance from ATC.

§ 91.517 Smoking and safety belt signs.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time that it is necessary to fasten their safety belts and when smoking is prohibited.

§ 91.519 Passenger briefing.

(a) Before each takeoff the pilot in command of an airplane carrying passengers shall ensure that all passengers have been orally briefed on—

(1) Smoking;

(2) Use of safety belts;

(3) Location and means for opening the passenger entry door and emergency exits;

(4) Location of survival equipment;

(5) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water; and

(6) The normal and emergency use of oxygen equipment installed on the airplane.

(b) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a member of the crew, but need not be given when the pilot in command determines that the passengers are familiar with the contents of the briefing. It may be supplemented by printed cards for the use of each passenger containing—

(1) A diagram of, and methods of operating, the emergency exits; and

(2) Other instructions necessary for use of emergency equipment.

(c) Each card used under paragraph (b) must be carried in convenient locations on the airplane for the use of each passenger and must contain information that is pertinent only to the type and model airplane on which it is used.

§ 91.521 Shoulder harness.

(a) No person may operate a transport category airplane that was type certificated after January 1, 1958, unless it is equipped at each seat at a flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

(b) No person may operate a transport category airplane unless it is equipped at each required flight attendant seat in the passenger compartment with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

§ 91.523 Carry-on baggage.

No pilot in command of an airplane having a seating capacity of more than 19 passengers may permit a passenger to stow baggage aboard that airplane except—

(a) In a suitable baggage or cargo storage compartment, or as provided in § 91.525; or

(b) Under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce the ultimate inertia forces specified in § 25.561(b)(3) of this chapter, or the requirements of the regulations under which the airplane was type certificated. Restraining devices must also limit sideward motion of under-seat baggage and be designed to withstand crash impacts severe enough to induce sideward forces specified in § 25.561(b)(3) of this chapter.

§ 91.525 Carriage of cargo.

(a) No pilot in command may permit cargo to be carried in any airplane unless—

(1) It is carried in an approved cargo rack, bin, or compartment installed in the airplane;

(2) It is secured by means approved by the Administrator; or

(3) It is carried in accordance with each of the following:

(i) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(ii) It is packaged or covered to avoid possible injury to passengers.

(iii) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components.

(iv) It is not located in a position that restricts the access to or use of any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment.

(v) It is not carried directly above seated passengers.

(b) When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

§ 91.527 Operating in icing conditions.

(a) No pilot may take off an airplane that has—

(1) Frost, snow, or ice adhering to any propeller, windshield, or powerplant installation or to an airspeed, altimeter,

rate of climb, or flight attitude instrument system;

(2) Snow or ice adhering to the wings or stabilizing or control surfaces; or

(3) Any frost adhering to the wings or stabilizing or control surfaces, unless that frost has been polished to make it smooth.

(b) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly—

(1) Under IFR into known or forecast moderate icing conditions; or

(2) Under VFR into known light or moderate icing conditions unless the aircraft has functioning de-icing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system.

(c) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly an airplane into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing conditions that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (b) and (c) of this section based on forecast conditions do not apply.

§ 91.529 Flight engineer requirements.

(a) No person may operate the following airplanes without a flight crewmember holding a current flight engineer certificate:

(1) An airplane for which a type certificate was issued before January 2, 1964, having a maximum certificated takeoff weight of more than 80,000 pounds.

(2) An airplane type certificated after January 1, 1964, for which a flight engineer is required by the type certification requirements.

(b) No person may serve as a required flight engineer on an airplane unless, within the preceding 6 calendar months, that person has had at least 50 hours of flight time as a flight engineer on that type airplane or has been checked by the Administrator on that type airplane and is found to be familiar and competent with all essential current information and operating procedures.

§ 91.531 Second in command requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane:

(1) A large airplane, except that a person may operate an airplane certificated under SFAR 41 without a pilot who is designated as second in command if that airplane is certificated for operation with one pilot.

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certification requirements for that airplane.

(3) A commuter category airplane, except that a person may operate a commuter category airplane notwithstanding paragraph (a)(1) of this section, that has a passenger seating configuration, excluding pilot seats, of nine or less without a pilot who is designated as second in command if that airplane is type certificated for operations with one pilot.

(b) The Administrator may issue a letter of authorization for the operation of an airplane without compliance with the requirements of paragraph (a) of this section if that airplane is designed for and type certificated with only one pilot station. The authorization contains any conditions that the Administrator finds necessary for safe operation.

(c) No person may designate a pilot to serve as second in command, nor may any pilot serve as second in command, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for second in command prescribed in § 61.55 of this chapter.

§ 91.533 Flight attendant requirements.

(a) No person may operate an airplane unless at least the following number of flight attendants are on board the airplane:

(1) For airplanes having more than 19 but less than 51 passengers on board, one flight attendant.

(2) For airplanes having more than 50 but less than 101 passengers on board, two flight attendants.

(3) For airplanes having more than 100 passengers on board, two flight attendants plus one additional flight attendant for each unit (or part of a unit) of 50 passengers above 100.

(b) No person may serve as a flight attendant on an airplane when required by paragraph (a) of this section unless that person has demonstrated to the pilot in command familiarity with the necessary functions to be performed in an emergency or a situation requiring

emergency evacuation and is capable of using the emergency equipment installed on that airplane.

§§ 91.535-91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

§ 91.601 Applicability.

This subpart applies to operation of large and transport category U.S.-registered civil aircraft.

§ 91.603 Aural speed warning device.

No person may operate a transport category airplane in air commerce unless that airplane is equipped with an aural speed warning device that complies with § 25.1303(c)(1).

§ 91.605 Transport category civil airplane weight limitations.

(a) No person may take off any transport category airplane (other than a turbine-engine-powered airplane certificated after September 30, 1958) unless—

(1) The takeoff weight does not exceed the authorized maximum takeoff weight for the elevation of the airport of takeoff;

(2) The elevation of the airport of takeoff is within the altitude range for which maximum takeoff weights have been determined;

(3) Normal consumption of fuel and oil in flight to the airport of intended landing will leave a weight on arrival not in excess of the authorized maximum landing weight for the elevation of that airport; and

(4) The elevations of the airport of intended landing and of all specified alternate airports are within the altitude range for which the maximum landing weights have been determined.

(b) No person may operate a turbine-engine-powered transport category airplane certificated after September 30, 1958, contrary to the Airplane Flight Manual, or take off that airplane unless—

(1) The takeoff weight does not exceed the takeoff weight specified in the Airplane Flight Manual for the elevation of the airport and for the ambient temperature existing at the time of takeoff;

(2) Normal consumption of fuel and oil in flight to the airport of intended landing and to the alternate airports will leave a weight on arrival not in excess of the landing weight specified in the Airplane Flight Manual for the elevation of each of the airports involved and for the ambient temperatures expected at the time of landing;

(3) The takeoff weight does not exceed the weight shown in the Airplane Flight Manual to correspond with the minimum distances required for takeoff considering the elevation of the airport, the runway to be used, the effective runway gradient, and the ambient temperature and wind component existing at the time of takeoff; and

(4) Where the takeoff distance includes a clearway, the clearway distance is not greater than one-half of—

(i) The takeoff run, in the case of airplanes certificated after September 30, 1958, and before August 30, 1959; or

(ii) The runway length, in the case of airplanes certificated after August 29, 1959.

(c) No person may take off a turbine-engine-powered transport category airplane certificated after August 29, 1959, unless, in addition to the requirements of paragraph (b) of this section—

(1) The accelerate-stop distance is no greater than the length of the runway plus the length of the stopway (if present); and

(2) The takeoff distance is no greater than the length of the runway plus the length of the clearway (if present); and

(3) The takeoff run is no greater than the length of the runway.

§ 91.607 Emergency exits for airplanes carrying passengers for hire.

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations effective before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants—

(1) Allowed under Civil Air Regulations § 4b.362 (a), (b), and (c) as in effect on December 20, 1951; or

(2) Approved under Special Civil Air Regulations SR-387, SR-389, SR-389A, or SR-389B, or under this section as in effect.

However, an airplane type listed in the following table may be operated with up to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers or with an occupant-exit configuration approved under paragraph (b) or (c) of this section.

Airplane type	Maximum number of occupants including all crewmembers	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	67	4
CV-240	53	6
CV-340 and CV-440	53	6
DC-3	35	4
DC-3 (Super)	39	5
DC-4	86	5
DC-6	87	7
DC-6B	112	11
L-18	17	3
L-049, L-649, L-749	87	7
L-1049 series	96	9
M-202	53	6
M-404	53	7
Viscount 700 series	53	7

(b) Occupants in addition to those authorized under paragraph (a) of this section may be carried as follows:

(1) For each additional floor-level exit at least 24 inches wide by 48 inches high, with an unobstructed 20-inch-wide access aisleway between the exit and the main passenger aisle, 12 additional occupants.

(2) For each additional window exit located over a wing that meets the requirements of the airworthiness standards under which the airplane was type certificated or that is large enough to inscribe an ellipse 19×26 inches, eight additional occupants.

(3) For each additional window exit that is not located over a wing but that otherwise complies with paragraph (b)(2) of this section, five additional occupants.

(4) For each airplane having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for each airplane that does not have at least one full-size, door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit that complies with paragraph (b)(1) of this section and must be located in the rear part of the cabin on the opposite side of the fuselage from the main entrance door. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage in the rear part of the cabin.

(c) No person may eliminate any approved exit except in accordance with the following:

(1) The previously authorized maximum number of occupants must be reduced by the same number of

additional occupants authorized for that exit under this section.

(2) Exits must be eliminated in accordance with the following priority schedule: First, non-over-wing window exits; second, over-wing window exits; third, floor-level exits located in the forward part of the cabin; and fourth, floor-level exits located in the rear of the cabin.

(3) At least one exit must be retained on each side of the fuselage regardless of the number of occupants.

(4) No person may remove any exit that would result in a ratio of maximum number of occupants to approved exits greater than 14:1.

(d) This section does not relieve any person operating under part 121 of this chapter from complying with § 121.291.

§ 91.609 Flight recorders and cockpit voice recorders.

(a) No holder of an air carrier operating certificate or an operating certificate may conduct any operation under this part with an aircraft listed in the holder's operations specifications or current list of aircraft used in air transportation unless that aircraft complies with any applicable flight recorder and cockpit voice recorder requirements of the part under which its certificate is issued except that the operator may—

(1) Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made;

(2) Continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off;

(3) Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communications or electrical equipment installed in the aircraft; or

(4) Ferry a newly acquired aircraft from the place where possession of it is taken to a place where the flight recorder or cockpit voice recorder is to be installed.

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats of 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in appendix E to this part, for an airplane, or

appendix F to this part, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder, required by this section, is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the checklist before the flight to completion of the final checklist at the end of the flight.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

(f) In the event of an accident or occurrence requiring immediate notification to the National Transportation Safety Board under part 830 of its regulations that results in the termination of the flight, any operator who has installed approved flight recorders and approved cockpit voice recorders shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with the investigation under part 830. The Administrator does not use the cockpit voice recorder record in any civil penalty or certificate action.

§ 91.611 Authorization for ferry flight with one engine inoperative.

(a) *General.* The holder of an air carrier operating certificate or an operating certificate issued under Part 125 may conduct a ferry flight of a four-

engine airplane or a turbine-engine-powered airplane equipped with three engines, with one engine inoperative, to a base for the purpose of repairing that engine subject to the following:

(1) The airplane model has been test flown and found satisfactory for safe flight in accordance with paragraph (b) or (c) of this section, as appropriate. However, each operator who before November 19, 1966, has shown that a model of airplane with an engine inoperative is satisfactory for safe flight by a test flight conducted in accordance with performance data contained in the applicable Airplane Flight Manual under paragraph (a)(2) of this section need not repeat the test flight for that model.

(2) The approved Airplane Flight Manual contains the following performance data and the flight is conducted in accordance with that data:

- (i) Maximum weight.
- (ii) Center of gravity limits.
- (iii) Configuration of the inoperative propeller (if applicable).
- (iv) Runway length for takeoff (including temperature accountability).
- (v) Altitude range.
- (vi) Certificate limitations.
- (vii) Ranges of operational limits.
- (viii) Performance information.
- (ix) Operating procedures.

(3) The operator has FAA approved procedures for the safe operation of the airplane, including specific requirements for—

- (i) Limiting the operating weight on any ferry flight to the minimum necessary for the flight plus the necessary reserve fuel load;
- (ii) A limitation that takeoffs must be made from dry runways unless, based on a showing of actual operating takeoff techniques on wet runways with one engine inoperative, takeoffs with full controllability from wet runways have been approved for the specific model aircraft and included in the Airplane Flight Manual;
- (iii) Operations from airports where the runways may require a takeoff or approach over populated areas; and
- (iv) Inspection procedures for determining the operating condition of the operative engines.

(4) No person may take off an airplane under this section if—

- (i) The initial climb is over thickly populated areas; or
- (ii) Weather conditions at the takeoff or destination airport are less than those required for VFR flight.

(5) Persons other than required flight crewmembers shall not be carried during the flight.

(6) No person may use a flight crewmember for flight under this section

unless that crewmember is thoroughly familiar with the operating procedures for one-engine inoperative ferry flight contained in the certificate holder's manual and the limitations and performance information in the Airplane Flight Manual.

(b) *Flight tests: reciprocating-engine-powered airplanes.* The airplane performance of a reciprocating-engine-powered airplane with one engine inoperative must be determined by flight test as follows:

(1) A speed not less than $1.3 V_{S1}$ must be chosen at which the airplane may be controlled satisfactorily in a climb with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator and with all other engines operating at the maximum power determined in paragraph (b)(3) of this section.

(2) The distance required to accelerate to the speed listed in paragraph (b)(1) of this section and to climb to 50 feet must be determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator; and

(iii) The other engines operating at not more than maximum power established under paragraph (b)(3) of this section.

(3) The takeoff, flight and landing procedures, such as the approximate trim settings, method of power application, maximum power, and speed must be established.

(4) The performance must be determined at a maximum weight not greater than the weight that allows a rate of climb of at least 400 feet per minute in the en route configuration set forth in § 25.67(d) of this chapter in effect on January 31, 1977, at an altitude of 5,000 feet.

(5) The performance must be determined using temperature accountability for the takeoff field length, computed in accordance with § 25.61 of this chapter in effect on January 31, 1977.

(c) *Flight tests: Turbine-engine-powered airplanes.* The airplane performance of a turbine-engine-powered airplane with one engine inoperative must be determined by flight tests, including at least three takeoff tests, in accordance with the following:

(1) Takeoff speeds V_R and V_2 , not less than the corresponding speeds under which the airplane was type certificated under § 25.107 of this chapter, must be chosen at which the airplane may be controlled satisfactorily with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator, if applicable) and with all

other engines operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(2) The minimum takeoff field length must be the horizontal distance required to accelerate and climb to the 35-foot height at V_2 speed (including any additional speed increment obtained in the tests) multiplied by 115 percent and determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator (if applicable); and

(iii) The other engine operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(3) The takeoff, flight, and landing procedures such as the approximate trim setting, method of power application, maximum power, and speed must be established. The airplane must be satisfactorily controllable during the entire takeoff run when operated according to these procedures.

(4) The performance must be determined at a maximum weight not greater than the weight determined under § 25.121(c) of this chapter but with—

(i) The actual steady gradient of the final takeoff climb requirement not less than 1.2 percent at the end of the takeoff path with two critical engines inoperative; and

(ii) The climb speed not less than the two-engine inoperative trim speed for the actual steady gradient of the final takeoff climb prescribed by paragraph (c)(4)(i) of this section.

(5) The airplane must be satisfactorily controllable in a climb with two critical engines inoperative. Climb performance may be shown by calculations based on, and equal in accuracy to, the results of testing.

(6) The performance must be determined using temperature accountability for takeoff distance and final takeoff climb computed in accordance with § 25.101 of this chapter. For the purpose of paragraphs (c)(4) and (5) of this section, "two critical engines" means two adjacent engines on one side of an airplane with four engines, and the center engine and one outboard engine on an airplane with three engines.

§ 91.613 Materials for compartment interiors.

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds unless within 1 year after issuance of the initial

airworthiness certificate under that SFAR the airplane meets the compartment interior requirements set forth in § 25.853 (a), (b), (b-1), (b-2), and (b-3) of this chapter in effect on September 26, 1978.

§§ 91.615-91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft Outside of the United States

§ 91.701 Applicability.

This subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c), 91.130, and 91.131;

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force;

(3) Except for §§ 91.307(b), 91.309, 91.323, and 91.711, comply with this part so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation; and

(4) When over the North Atlantic within airspace designated as Minimum Navigation Performance Specifications airspace, comply with § 91.705.

(b) Annex 2 to the Convention on International Civil Aviation, Eighth Edition—July 1986, with amendments through Amendment 28 effective November 1987, to which reference is made in this part, is incorporated into this part and made a part hereof as provided in 5 U.S.C. 552 and pursuant to 1 CFR part 51, annex 2 (including a complete historic file of changes thereto) is available for public inspection at the Rules Docket, AGC-10, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. In addition, Annex 2 may be purchased from the International Civil Aviation Organization (Attention: Distribution Officer), P.O. Box 400, Succursale, Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2.

§ 91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.

No person may operate a civil aircraft of U.S. registry in North Atlantic (NAT) airspace designated as Minimum Navigation Performance Specifications (MNPS) airspace unless—

(a) The aircraft has approved navigation performance capability which complies with the requirements of Appendix C of this part; and

(b) The operator is authorized by the Administrator to perform such operations.

(c) The Administrator authorizes deviations from the requirements of this section in accordance with section 3 of appendix C to this part.

§ 91.707 Flights between Mexico or Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

§ 91.709 Operations to Cuba.

No person may operate a civil aircraft from the United States to Cuba unless—

(a) Departure is from an international airport of entry designated in § 6.13 of the Air Commerce Regulations of the Bureau of Customs (19 CFR 6.13); and

(b) In the case of departure from any of the 48 contiguous States or the District of Columbia, the pilot in command of the aircraft has filed—

(1) A DVFR or IFR flight plan as prescribed in § 99.11 or § 99.13 of this chapter; and

(2) A written statement, within 1 hour before departure, with the Office of Immigration and Naturalization Service at the airport of departure, containing—

(i) All information in the flight plan;

(ii) The name of each occupant of the aircraft;

(iii) The number of occupants of the aircraft; and

(iv) A description of the cargo, if any. This section does not apply to the operation of aircraft by a scheduled air carrier over routes authorized in operations specifications issued by the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.711 Special rules for foreign civil aircraft.

(a) *General.* In addition to the other applicable regulations of this part, each person operating a foreign civil aircraft within the United States shall comply with this section.

(b) *VFR.* No person may conduct VFR operations which require two-way radio

communications under this part unless at least one crewmember of that aircraft is able to conduct two-way radio communications in the English language and is on duty during that operation.

(c) *IFR.* No person may operate a foreign civil aircraft under IFR unless—

(1) That aircraft is equipped with—

(i) Radio equipment allowing two-way radio communications with ATC when it is operated in control zone or control area; and

(ii) Radio navigational equipment appropriate to the navigational facilities to be used;

(2) Each person piloting the aircraft—

(i) Holds a current United States instrument rating or is authorized by his foreign airman certificate to pilot under IFR; and

(ii) Is thoroughly familiar with the United States en route, holding, and letdown procedures; and

(3) At least one crewmember of that aircraft is able to conduct two-way radiotelephone communications in the English language and that crewmember is on duty while the aircraft is approaching, operating within, or leaving the United States.

(d) *Over water.* Each person operating a foreign civil aircraft over water off the shores of the United States shall give flight notification or file a flight plan in accordance with the Supplementary Procedures for the ICAO region concerned.

(e) *Flight at and above FL 240.* If VOR navigational equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 240, unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. When DME required by this paragraph fails at and above FL 240, the pilot in command of the aircraft shall notify ATC immediately and may then continue operations at and above FL 240 to the next airport of intended landing at which repairs or replacement of the equipment can be made. However, paragraph (e) of this section does not apply to foreign civil aircraft that are not equipped with DME when operated for the following purposes and if ATC is notified prior to each takeoff:

(1) Ferry flights to and from a place in the United States where repairs or alterations are to be made.

(2) Ferry flights to a new country of registry.

(3) Flight of a new aircraft of U.S. manufacture for the purpose of—

(i) Flight testing the aircraft;

(ii) Training foreign flight crews in the operation of the aircraft; or

(iii) Ferrying the aircraft for export delivery outside the United States.

(4) Ferry, demonstration, and test flight of an aircraft brought to the United States for the purpose of demonstration or testing the whole or any part thereof.

§ 91.713 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry except in controlled airspace and in accordance with air traffic clearance or air traffic control instructions that may require use of specific airways or routes and landings at specific airports.

§ 91.715 Special flight authorizations for foreign civil aircraft.

(a) Foreign civil aircraft may be operated without airworthiness certificates required under § 91.203 if a special flight authorization for that operation is issued under this section. Application for a special flight authorization must be made to the Regional Director of the FAA region in which the applicant is located or to the region within which the U.S. point of entry is located. However, in the case of an aircraft to be operated in the U.S. for the purpose of demonstration at an airshow, the application may be made to the Regional Director of the FAA region in which the airshow is located.

(b) The Administrator may issue a special flight authorization for a foreign civil aircraft subject to any conditions and limitations that the Administrator considers necessary for safe operation in the U.S. airspace.

(c) No person may operate a foreign civil aircraft under a special flight authorization unless that operation also complies with part 375 of the Special Regulations of the Department of Transportation (14 CFR part 375).

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§§ 91.717-91.799 [Reserved]

Subpart I—Operating Noise Limits

§ 91.801 Applicability: Relation to Part 36.

(a) This subpart prescribes operating noise limits and related requirements that apply, as follows, to the operation of civil aircraft in the United States.

(1) Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to civil subsonic turbojet airplanes with maximum weights of more than 75,000 pounds and—

(i) If U.S. registered, that have standard airworthiness certificates; or

(ii) If foreign registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, and 135 of this chapter.

(2) Section 91.813 applies to U.S. operators of civil subsonic turbojet airplanes covered by this subpart. This section applies to operators operating to or from airports in the United States under this part and parts 121, 125, and 135, but not to those operating under part 129 of this chapter.

(3) Sections 91.803, 91.819, and 91.821 apply to U.S.-registered civil supersonic airplanes having standard airworthiness certificates and to foreign-registered civil supersonic airplanes that, if registered in the United States, would be required by this chapter to have U.S. standard airworthiness certificates in order to conduct the operations intended for the airplane. Those sections apply to operations under this part and under parts 121, 125, 129, and 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart "part 36" refers to 14 CFR part 36, including the noise levels under appendix C of that part, notwithstanding the provisions of that part excepting certain airplanes from the specified noise requirements. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meanings specified under part 36 of this chapter. For purposes of this subpart, for subsonic airplanes operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under part 36 for that airplane. Determinations made under these provisions are subject to the limitations of § 36.5 of this chapter as if those noise levels were part 36 noise levels.

§ 91.803 Part 125 operators: Designation of applicable regulations.

For airplanes covered by this subpart and operated under part 125 of this chapter, the following regulations apply as specified:

(a) For each airplane operation to which requirements prescribed under this subpart applied before November

29, 1980, those requirements of this subpart continue to apply.

(b) For each subsonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements prescribed under §§ 91.805, 91.809, 91.811, and 91.813 of this subpart apply.

(c) For each supersonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or part 121, 129, or 135 of this chapter, the requirements of §§ 91.819 and 91.821 of this subpart apply.

(d) For each airplane required to operate under part 125 for which a deviation under that part is approved to operate, in whole or in part, under this part or part 121, 129, or 135 of this chapter, notwithstanding the approval, the requirements prescribed under paragraphs (a), (b), and (c) of this section continue to apply.

§ 91.805 Final compliance: Subsonic airplanes.

Except as provided in §§ 91.809 and 91.811, on and after January 1, 1985, no person may operate to or from an airport in the United States any subsonic airplane covered by this subpart unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter.

§ 91.807 Phased compliance under Parts 121, 125, and 135: Subsonic airplanes.

(a) *General.* Each person operating airplanes under part 121, 125, or 135 of this chapter, as prescribed under § 91.803 of this subpart, regardless of the state of registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) *Compliance schedules.* Except for airplanes shown to be operated in foreign air commerce under paragraph (c) of this section or covered by an exemption (including those issued under § 91.811), airplanes operated by U.S. operators in air commerce in the United States must be shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter, in accordance with the following schedule, or they may not be operated to or from airports in the United States:

(1) By January 1, 1981—

(i) At least one quarter of the airplanes that have four engines with no

bypass ratio or with a bypass ratio less than two; and

(ii) At least half of the airplanes powered by engines with any other bypass ratio or by another number of engines.

(2) By January 1, 1983—

(i) At least one-half of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) All airplanes powered by engines with any other bypass ratio or by another number of engines.

(c) *Apportionment of airplanes.* For purposes of paragraph (b) of this section, a person operating airplanes engaged in domestic and foreign air commerce in the United States may elect not to comply with the phased schedule with respect to that portion of the airplanes operated by that person shown, under an approved method of apportionment, to be engaged in foreign air commerce in the United States.

§ 91.809 Replacement airplanes.

A Stage 1 airplane may be operated after the otherwise applicable compliance dates prescribed under §§ 91.805 and 91.807 if, under an approved plan, a replacement airplane has been ordered by the operator under a binding contract as follows:

(a) For replacement of an airplane powered by two engines, until January 1, 1986, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1986, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(b) For replacement of an airplane powered by three engines, until January 1, 1985, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1985, of a replacement airplane which has been shown to comply with Stage 3 noise levels under part 36 of this chapter.

(c) For replacement of any other airplane, until January 1, 1985, but not after the date specified in the plan, if the contract specifies delivery before January 1, 1985, of a replacement airplane which—

(1) Has been shown to comply with Stage 2 or Stage 3 noise levels under part 36 of this chapter prior to issuance of an original standard airworthiness certificate; or

(2) Has been shown to comply with Stage 3 noise levels under part 36 of this chapter prior to issuance of a standard airworthiness certificate other than original issue.

(d) Each operator of a Stage 1 airplane for which approval of a replacement plan is requested under this section shall submit to the Director, Office of Environment and Energy, an application constituting the proposed replacement plan (or revised plan) that contains the information specified under this paragraph and which is certified (under penalty of 18 U.S.C. 1001) as true and correct. Each application for approval must provide information corresponding to that specified in the contract, upon which the FAA may rely in considering its approval, as follows:

(1) Name and address of the applicant.

(2) Aircraft type and model and registration number for each airplane to be replaced under the plan.

(3) Aircraft type and model of each replacement airplane.

(4) Scheduled dates of delivery and introduction into service of each replacement airplane.

(5) Names and addresses of the parties to the contract and any other persons who may effectively cancel the contract or otherwise control the performance of any party.

(6) Information specifying the anticipated disposition of the airplanes to be replaced.

(7) A statement that the contract represents a legally enforceable, mutual agreement for delivery of an eligible replacement airplane.

(8) Any other information or documentation requested by the Director, Office of Environment and Energy, reasonably necessary to determine whether the plan should be approved.

§ 91.811 Service to small communities exemption: Two-engine, subsonic airplanes.

(a) A Stage I airplane powered by two engines may be operated after the compliance dates prescribed under §§ 91.805, 91.807, and 91.809 when, with respect to that airplane, the Administrator issues an exemption to the operator from the noise level requirements under this subpart. Each exemption issued under this section terminates on the earliest of the following dates:

(1) For an exempted airplane sold, or otherwise disposed of, to another person on or after January 1, 1983, on the date of delivery to that person.

(2) For an exempted airplane with a seating configuration of 100 passenger seats or less, on January 1, 1988.

(3) For an exempted airplane with a seating configuration of more than 100 passenger seats, on January 1, 1985.

(b) For the purpose of this section, the seating configuration of an airplane is

governed by that shown to exist on December 1, 1979, or an earlier date established for that airplane by the Administrator.

§ 91.813 Compliance plans and status: U.S. operations of subsonic airplanes.

(a) Each U.S. operator of a civil subsonic airplane covered by this subpart (regardless of the state of registry) shall submit to the Director, Office of Environment and Energy, in accordance with this section, the operator's current compliance status and plan for achieving and maintaining compliance with the applicable noise level requirements of this subpart. If appropriate, an operator may substitute for the required plan a notice, certified as true (under penalty of 18 U.S.C. 1001) by that operator, that no change in the plan or status of any airplane affected by the plan has occurred since the date of the plan most recently submitted under this section.

(b) Each compliance plan, including each revised plan, must contain the information specified under paragraph (c) of this section for each airplane covered by this section that is operated by the operator. Unless otherwise approved by the Administrator, compliance plans must provide the required plan and status information as it exists on the date 30 days before the date specified for submission of the plan. Plans must be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001) and be submitted for each airplane covered by this section on or before 90 days after initially commencing operation of airplanes covered by this section, whichever is later, and thereafter—

(1) Thirty days after any change in the operator's fleet or compliance planning decisions that has a separate or cumulative effect on 10 percent or more of the airplanes in either class of airplanes covered by § 91.807(b); and

(2) Thirty days after each compliance date applicable to that airplane under this subpart, and annually thereafter through 1985, or until any later date for that airplane prescribed under this subpart, on the anniversary of that submission date, to show continuous compliance with this subpart.

(c) Each compliance plan submitted under this section must identify the operator and include information regarding the compliance plan and status for each airplane covered by the plan as follows:

(1) Name and address of the airplane operator.

(2) Name and telephone number of the person designated by the operator to be

responsible for the preparation of the compliance plan and its submission.

(3) The total number of airplanes covered by this section and in each of the following classes and subclasses:

(i) For airplanes engaged in domestic air commerce—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(ii) For airplanes engaged in foreign air commerce under an approved apportionment plan—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(4) For each airplane covered by this section—

(i) Aircraft type and model;

(ii) Aircraft registration number;

(iii) Aircraft manufacturer serial number;

(iv) Aircraft powerplant make and model;

(v) Aircraft year of manufacture;

(vi) Whether part 36 noise level compliance has been shown, "Yes/No";

(vii) The appropriate code prescribed under paragraph (c)(5) of this section which indicates the acoustical technology installed, or to be installed, on the airplane;

(viii) For airplanes on which acoustical technology has been or will be applied, following the appropriate code entry, the actual or scheduled month and year of installation on the airplane;

(ix) For DC-8 and B-707 airplanes operated in domestic U.S. air commerce which have been or will be retired from service in the United States without replacement between January 24, 1977, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of retirement of the airplane from service;

(x) For DC-8 and B-707 airplanes operated in foreign air commerce in the United States which have been or will be retired from service in the United States without replacement between April 14, 1980, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed

by the actual or scheduled month and year of retirement of the airplane from service;

(xi) For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the scheduled month and year for replacement of the airplane;

(xii) For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section;

(xiii) For airplanes covered by an exemption issued to the operator granting relief from noise level requirements of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of expiration of the exemption and the appropriate code and applicable dates which indicate the compliance strategy planned or implemented for the airplane;

(xiv) For all airplanes covered by this section, the number of spare shipsets of acoustical components needed for continuous compliance and the number available on demand to the operator in support of those airplanes; and

(xv) For airplanes for which none of the other codes prescribed under paragraph (c)(5) of this section describes either the technology applied or to be applied to the airplane in accordance with the certification requirements under Parts 21 and 36 of this chapter, or the compliance strategy or methodology following the code "OTH," enter the date of any certificate action and attach an addendum to the plan explaining the nature and the extent of the certificated technology, strategy, or methodology employed, with reference to the type certificate documentation.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/ STRATEGY CODES

Code	Airplane type/ model	Certificate technology
A	B-707-120B; B-707-320B/C; B-720B	Quiet nacelles + T-ring.
B	B-727-100	Double wall fan duct treatment.
C	B-727-200	Double wall fan duct treatment (pre-January 1977 installations and amended type certificate).
D	B-727-200; B-737-100; B-737-200	Quiet nacelles + double wall fan duct treatment.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/ STRATEGY CODES—Continued

Code	Airplane type/ model	Certificate technology
E	B-747-100 (pre-December 1971); B-747-200 (pre-December 1971)	Fixed lip inlets + sound absorbing material treatment.
F	DC-8	New extended inlet and bullet with treatment + fan duct treatment areas.
G	DC-9	P-36 sound absorbing material treatment kit.
H	BAC-111-200	Silencer kit (BAC Acoustic Report 522).
I	BAC-111-400	Silencer kit (BAC Acoustic Report 598).
J	B-707; DC-8	Reengineered with high bypass ratio turbojet engines + quiet nacelles (if certificated under stage 3 noise level requirements).

REP—For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart.

EFC—For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.811 of this subpart.

RET—For DC-8 and B-707 airplanes operated in domestic U.S. air commerce and retired from service in the United States without replacement between January 24, 1977, and January 1, 1985. RFC—For DC-8 and B-707 airplanes operated by U.S. operators in foreign air commerce in the United States and retired from service in the United States without replacement between April 14, 1980, and January 1, 1985.

EXD—For airplanes exempted from showing compliance with the noise level requirements of this subpart.

OTH—For airplanes for which no other prescribed code describes either the certificated technology applied or to be applied to the airplane, or the compliance strategy, or methodology. (An addendum must explain the nature and extent of technology, strategy, or methodology, and reference the type certificate documentation.)

§ 91.815 Agricultural and fire fighting airplanes: Noise operating limitations.

(a) This section applies to propeller-driven, small airplanes having standard airworthiness certificates that are designed for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966) or for dispensing fire fighting materials.

(b) If the Airplane Flight Manual, or other approved manual material information, markings, or placards for the airplane indicate that the airplane

has not been shown to comply with the noise limits under part 36 of this chapter, no person may operate that airplane, except—

(1) To the extent necessary to accomplish the work activity directly associated with the purpose for which it is designed;

(2) To provide flight crewmember training in the special purpose operation for which the airplane is designed; and

(3) To conduct "nondispersing aerial work operations" in accordance with the requirements under § 137.29(c) of this chapter.

§ 91.817 Civil aircraft sonic boom.

(a) No person may operate a civil aircraft in the United States at a true flight Mach number greater than 1 except in compliance with conditions and limitations in an authorization to exceed Mach 1 issued to the operator under appendix B of this part.

(b) In addition, no person may operate a civil aircraft for which the maximum operating limit speed M_{MO} exceeds a Mach number of 1, to or from an airport in the United States, unless—

(1) Information available to the flight crew includes flight limitations that ensure that flights entering or leaving the United States will not cause a sonic boom to reach the surface within the United States; and

(2) The operator complies with the flight limitations prescribed in paragraph (b)(1) of this section or complies with conditions and limitations in an authorization to exceed Mach 1 issued under appendix B of this part.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

§ 91.819 Civil supersonic airplanes that do not comply with Part 36.

(a) *Applicability.* This section applies to civil supersonic airplanes that have not been shown to comply with the Stage 2 noise limits of Part 36 in effect on October 13, 1977, using applicable trade-off provisions, and that are operated in the United States, after July 31, 1978.

(b) *Airport use.* Except in an emergency, the following apply to each person who operates a civil supersonic airplane to or from an airport in the United States:

(1) Regardless of whether a type design change approval is applied for under part 21 of this chapter, no person may land or take off an airplane covered by this section for which the type design is changed, after July 31, 1978, in a manner constituting an "acoustical change" under § 21.93 unless the

acoustical change requirements of part 36 are complied with.

(2) No flight may be scheduled, or otherwise planned, for takeoff or landing after 10 p.m. and before 7 a.m. local time.

§ 91.821 Civil supersonic airplanes: Noise limits.

Except for Concorde airplanes having flight time before January 1, 1980, no person may operate in the United States, a civil supersonic airplane that does not comply with Stage 2 noise limits of part 36 in effect on October 13, 1977, using applicable trade-off provisions.

§§ 91.823-91.899 [Reserved]

Subpart J—Waivers

§ 91.901 [Reserved]

§ 91.903 Policy and procedures.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation from any rule listed in this subpart if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this part is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate of waiver.

§ 91.905 List of rules subject to waivers.

Sec.

- 91.107 Use of safety belts.
- 91.111 Operating near other aircraft.
- 91.113 Right-of-way rules: Except water operations.
- 91.115 Right-of-way rules: Water operations.
- 91.117 Aircraft speed.
- 91.119 Minimum safe altitudes: General.
- 91.121 Altimeter settings.
- 91.123 Compliance with ATC clearances and instructions.
- 91.125 ATC light signals.
- 91.127 Operating on or in the vicinity of an airport: General rules.
- 91.129 Operating at airports with operating control towers.
- 91.131 Terminal control areas.
- 91.133 Restricted and prohibited areas.
- 91.135 Positive control areas and route segments.
- 91.137 Temporary flight restrictions.
- 91.141 Flight restrictions in the proximity of the Presidential and other parties.
- 91.143 Flight limitation in the proximity of space flight operations.
- 91.153 VFR flight plan: Information required.
- 91.155 Basic VFR weather minimums.
- 91.157 Special VFR weather minimums.
- 91.159 VFR cruising altitude or flight level.
- 91.169 IFR flight plan: Information required.
- 91.173 ATC clearance and flight plan required.

Sec.

- 91.175 Takeoff and landing under IFR.
- 91.177 Minimum altitudes for IFR operations.
- 91.179 IFR cruising altitude or flight level.
- 91.181 Course to be flown.
- 91.183 IFR radio communications.
- 91.185 IFR operations: Two-way radio communications failure.
- 91.187 Operation under IFR in controlled airspace: Malfunction reports.
- 91.209 Aircraft lights.
- 91.303 Aerobatic flights.
- 91.305 Flight test areas.
- 91.311 Towing: Other than under § 91.309.
- 91.313(e) Restricted category civil aircraft: Operating limitations.
- 91.515 Flight altitude rules.
- 91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
- 91.707 Flights between Mexico or Canada and the United States.
- 91.713 Operation of civil aircraft of Cuban registry.

§§ 91.907-91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance

1. Category II Manual

(a) *Application for approval.* An applicant for approval of a Category II manual or an amendment to an approved Category II manual must submit the proposed manual or amendment to the Flight Standards District Office having jurisdiction of the area in which the applicant is located. If the application requests an evaluation program, it must include the following:

- (1) The location of the aircraft and the place where the demonstrations are to be conducted; and
- (2) The date the demonstrations are to commence (at least 10 days after filing the application).

(b) *Contents.* Each Category II manual must contain:

- (1) The registration number, make, and model of the aircraft to which it applies;
- (2) A maintenance program as specified in section 4 of this appendix; and
- (3) The procedures and instructions related to recognition of decision height, use of runway visual range information, approach monitoring, the decision region (the region between the middle marker and the decision height), the maximum permissible deviations of the basic ILS indicator within the decision region, a missed approach, use of airborne low approach equipment, minimum altitude for the use of the autopilot, instrument and equipment failure warning systems, instrument failure, and other procedures, instructions, and limitations that may be found necessary by the Administrator.

2. Required Instruments and Equipment

The instruments and equipment listed in this section must be installed in each aircraft operated in a Category II operation. This section does not require duplication of instruments and equipment required by § 91.205 or any other provisions of this chapter.

(a) *Group I.* (1) Two localizer and glide slope receiving systems. Each system must provide a basic ILS display and each side of the instrument panel must have a basic ILS display. However, a single localizer antenna and a single glide slope antenna may be used.

(2) A communications system that does not affect the operation of at least one of the ILS systems.

(3) A marker beacon receiver that provides distinctive aural and visual indications of the outer and the middle markers.

(4) Two gyroscopic pitch and bank indicating systems.

(5) Two gyroscopic direction indicating systems.

(6) Two airspeed indicators.

(7) Two sensitive altimeters adjustable for barometric pressure, each having a placarded correction for altimeter scale error and for the wheel height of the aircraft. After June 26, 1979, two sensitive altimeters adjustable for barometric pressure, having markings at 20-foot intervals and each having a placarded correction for altimeter scale error and for the wheel height of the aircraft.

(8) Two vertical speed indicators.

(9) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering command in relation to an ILS localizer and, on the same instrument, either computed information as pitch command in relation to an ILS glide slope or basic ILS glide slope information. An automatic approach coupler must provide at least automatic steering in relation to an ILS localizer. The flight control guidance system may be operated from one of the receiving systems required by subparagraph (1) of this paragraph.

(10) For Category II operations with decision heights below 150 feet either a marker beacon receiver providing aural and visual indications of the inner marker or a radio altimeter.

(b) *Group II.* (1) Warning systems for immediate detection by the pilot of system faults in items (1), (4), (5), and (9) of Group I and, if installed for use in Category III operations, the radio altimeter and autothrottle system.

(2) Dual controls.

(3) An externally vented static pressure system with an alternate static pressure source.

(4) A windshield wiper or equivalent means of providing adequate cockpit visibility for a safe visual transition by either pilot to touchdown and rollout.

(5) A heat source for each airspeed system pitot tube installed or an equivalent means of preventing malfunctioning due to icing of the pitot system.

3. Instruments and Equipment Approval

(a) *General.* The instruments and equipment required by section 2 of this appendix must be approved as provided in this section before being used in Category II operations. Before presenting an aircraft for approval of the instruments and equipment, it must be shown that since the beginning of the

12th calendar month before the date of submission—

(1) The ILS localizer and glide slope equipment were bench checked according to the manufacturer's instructions and found to meet those standards specified in RTCA Paper 23-63/DO-117 dated March 14, 1963, "Standard Adjustment Criteria for Airborne Localizer and Glide Slope Receivers," which may be obtained from the RTCA Secretariat, 1425 K St., NW., Washington, DC 20005.

(2) The altimeters and the static pressure systems were tested and inspected in accordance with Appendix E to Part 43 of this chapter; and

(3) All other instruments and items of equipment specified in section 2(a) of this appendix that are listed in the proposed maintenance program were bench checked and found to meet the manufacturer's specifications.

(b) *Flight control guidance system.* All components of the flight control guidance system must be approved as installed by the evaluation program specified in paragraph (e) of this section if they have not been approved for Category III operations under applicable type or supplemental type certification procedures. In addition, subsequent changes to make, model, or design of the components must be approved under this paragraph. Related systems or devices, such as the autothrottle and computed missed approach guidance system, must be approved in the same manner if they are to be used for Category II operations.

(c) *Radio altimeter.* A radio altimeter must meet the performance criteria of this paragraph for original approval and after each subsequent alteration.

(1) It must display to the flight crew clearly and positively the wheel height of the main landing gear above the terrain.

(2) It must display wheel height above the terrain to an accuracy of plus or minus 5 feet or 5 percent, whichever is greater, under the following conditions:

(i) Pitch angles of zero to plus or minus 5 degrees about the mean approach attitude.

(ii) Roll angles of zero to 20 degrees in either direction.

(iii) Forward velocities from minimum approach speed up to 200 knots.

(iv) Sink rates from zero to 15 feet per second at altitudes from 100 to 200 feet.

(3) Over level ground, it must track the actual altitude of the aircraft without significant lag or oscillation.

(4) With the aircraft at an altitude of 200 feet or less, any abrupt change in terrain representing no more than 10 percent of the aircraft's altitude must not cause the altimeter to unlock, and indicator response to such changes must not exceed 0.1 seconds and, in addition, if the system unlocks for greater changes, it must reacquire the signal in less than 1 second.

(5) Systems that contain a push-to-test feature must test the entire system (with or without an antenna) at a simulated altitude of less than 500 feet.

(6) The system must provide to the flight crew a positive failure warning display any time there is a loss of power or an absence of ground return signals within the designed range of operating altitudes.

(d) *Other instruments and equipment.* All other instruments and items of equipment required by § 2 of this appendix must be capable of performing as necessary for Category II operations. Approval is also required after each subsequent alteration to these instruments and items of equipment.

(e) *Evaluation program—(1) Application.* Approval by evaluation is requested as a part of the application for approval of the Category II manual.

(2) *Demonstrations.* Unless otherwise authorized by the Administrator, the evaluation program for each aircraft requires the demonstrations specified in this paragraph. At least 50 ILS approaches must be flown with at least five approaches on each of three different ILS facilities and no more than one-half of the total approaches on any one ILS facility. All approaches shall be flown under simulated instrument conditions to a 100-foot decision height and 90 percent of the total approaches made must be successful. A successful approach is one in which—

(i) At the 100-foot decision height, the indicated airspeed and heading are satisfactory for a normal flare and landing (speed must be plus or minus 5 knots of programmed airspeed, but may not be less than computed threshold speed if autothrottles are used);

(ii) The aircraft at the 100-foot decision height is positioned so that the cockpit is within, and tracking so as to remain within, the lateral confines of the runway extended;

(iii) Deviation from glide slope after leaving the outer marker does not exceed 50 percent of full-scale deflection as displayed on the ILS indicator;

(iv) No unusual roughness or excessive attitude changes occur after leaving the middle marker; and

(v) In the case of an aircraft equipped with an approach coupler, the aircraft is sufficiently in trim when the approach coupler is disconnected at the decision height to allow for the continuation of a normal approach and landing.

(3) *Records.* During the evaluation program the following information must be maintained by the applicant for the aircraft with respect to each approach and made available to the Administrator upon request:

(i) Each deficiency in airborne instruments and equipment that prevented the initiation of an approach.

(ii) The reasons for discontinuing an approach, including the altitude above the runway at which it was discontinued.

(iii) Speed control at the 100-foot decision height if auto-throttles are used.

(iv) Trim condition of the aircraft upon disconnecting the auto coupler with respect to continuation to flare and landing.

(v) Position of the aircraft at the middle marker and at the decision height indicated both on a diagram of the basic ILS display and a diagram of the runway extended to the middle marker. Estimated touchdown point must be indicated on the runway diagram.

(vi) Compatibility of flight director with the auto coupler, if applicable.

(vii) Quality of overall system performance.

(4) *Evaluation.* A final evaluation of the flight control guidance system is made upon

successful completion of the demonstrations. If no hazardous tendencies have been displayed or are otherwise known to exist, the system is approved as installed.

4. Maintenance program

(a) Each maintenance program must contain the following:

(1) A list of each instrument and item of equipment specified in § 2 of this appendix that is installed in the aircraft and approved for Category II operations, including the make and model of those specified in § 2(a).

(2) A schedule that provides for the performance of inspections under subparagraph (5) of this paragraph within 3 calendar months after the date of the previous inspection. The inspection must be performed by a person authorized by part 43 of this chapter, except that each alternate inspection may be replaced by a functional flight check. This functional flight check must be performed by a pilot holding a Category II pilot authorization for the type aircraft checked.

(3) A schedule that provides for the performance of bench checks for each listed instrument and item of equipment that is specified in section 2(a), within 12 calendar months after the date of the previous bench check.

(4) A schedule that provides for the performance of a test and inspection of each static pressure system in accordance with appendix E to part 43 of this chapter within 12 calendar months after the date of the previous test and inspection.

(5) The procedures for the performance of the periodic inspections and functional flight checks to determine the ability of each listed instrument and item of equipment specified in section 2(a) of this appendix to perform as approved for Category II operations including a procedure for recording functional flight checks.

(6) A procedure for assuring that the pilot is informed of all defects in listed instruments and items of equipment.

(7) A procedure for assuring that the condition of each listed instrument and item of equipment upon which maintenance is performed is at least equal to its Category II approval condition before it is returned to service for Category II operations.

(8) A procedure for an entry in the maintenance records required by § 43.9 of this chapter that shows the date, airport, and reasons for each discontinued Category II operation because of a malfunction of a listed instrument or item of equipment.

(b) *Bench check.* A bench check required by this section must comply with this paragraph.

(1) It must be performed by a certificated repair station holding one of the following ratings as appropriate to the equipment checked:

(i) An instrument rating.
(ii) A radio rating.
(iii) A rating issued under subpart D of part 145 of this chapter.

(2) It must consist of removal of an instrument or item of equipment and performance of the following:

(i) A visual inspection for cleanliness, impending failure, and the need for lubrication, repair, or replacement of parts;

(ii) Correction of items found by that visual inspection; and

(iii) Calibration to at least the manufacturer's specifications unless otherwise specified in the approved Category II manual for the aircraft in which the instrument or item of equipment is installed.

(c) *Extensions.* After the completion of one maintenance cycle of 12 calendar months, a request to extend the period for checks, tests, and inspections is approved if it is shown that the performance of particular equipment justifies the requested extension.

Appendix B—Authorizations to Exceed Mach 1 (section 91.817)

Section 1. Application

(a) An applicant for an authorization to exceed Mach 1 must apply in a form and manner prescribed by the Administrator and must comply with this appendix.

(b) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain all information requested by the Administrator necessary to assist him in determining whether the designation of a particular test area or issuance of a particular authorization is a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and to assist him in complying with that act and with related Executive Orders, guidelines, and orders prior to such action.

(c) In addition, each application for an authorization to exceed Mach 1 covered by section 2(a) of this appendix must contain—

(1) Information showing that operation at a speed greater than Mach 1 is necessary to accomplish one or more of the purposes specified in section 2(a) of this appendix, including a showing that the purpose of the test cannot be safely or properly accomplished by overocean testing;

(2) A description of the test area proposed by the applicant, including an environmental analysis of that area meeting the requirements of paragraph (b) of this section; and

(3) Conditions and limitations that will ensure that no measurable sonic boom overpressure will reach the surface outside of the designated test area.

(d) An application is denied if the Administrator finds that such action is necessary to protect or enhance the environment.

Section 2. Issuance

(a) For a flight in a designated test area, an authorization to exceed Mach 1 may be

issued when the Administrator has taken the environmental protective actions specified in section 1(b) of this appendix and the applicant shows one or more of the following:

(1) The flight is necessary to show compliance with airworthiness requirements.

(2) The flight is necessary to determine the sonic boom characteristics of the airplane or to establish means of reducing or eliminating the effects of sonic boom.

(3) The flight is necessary to demonstrate the conditions and limitations under which speeds greater than a true flight Mach number of 1 will not cause a measurable sonic boom overpressure to reach the surface.

(b) For a flight outside of a designated test area, an authorization to exceed Mach 1 may be issued if the applicant shows conservatively under paragraph (a)(3) of this section that—

(1) The flight will not cause a measurable sonic boom overpressure to reach the surface when the aircraft is operated under conditions and limitations demonstrated under paragraph (a)(3) of this section; and

(2) Those conditions and limitations represent all foreseeable operating conditions.

Section 3. Duration

(a) An authorization to exceed Mach 1 is effective until it expires or is surrendered, or until it is suspended or terminated by the Administrator. Such an authorization may be amended or suspended by the Administrator at any time if the Administrator finds that such action is necessary to protect the environment. Within 30 days of notification of amendment, the holder of the authorization must request reconsideration or the amendment becomes final. Within 30 days of notification of suspension, the holder of the authorization must request reconsideration or the authorization is automatically terminated. If reconsideration is requested within the 30-day period, the amendment or suspension continues until the holder shows why the authorization should not be amended or terminated. Upon such showing, the Administrator may terminate or amend the authorization if the Administrator finds that such action is necessary to protect the environment, or he may reinstate the authorization without amendment if he finds that termination or amendment is not necessary to protect the environment.

(b) Findings and actions by the Administrator under this section do not affect any certificate issued under Title VI of the Federal Aviation Act of 1958.

Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) Airspace

Section 1

NAT MNPS airspace is that volume of airspace between FL 275 and FL 400 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundary of Reykjavik Oceanic Control Area, the western boundary of Gander Oceanic Control Area, and the western boundary of New York Oceanic Control Area, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

Section 2

The navigation performance capability required for aircraft to be operated in the airspace defined in section 1 of this appendix is as follows:

(a) The standard deviation of lateral track errors shall be less than 6.3 NM (11.7 Km). Standard deviation is a statistical measure of data about a mean value. The mean is zero nautical miles. The overall form of data is such that the plus and minus 1 standard deviation about the mean encompasses approximately 68 percent of the data and plus or minus 2 deviations encompasses approximately 95 percent.

(b) The proportion of the total flight time spent by aircraft 30 NM (55.6 Km) or more off the cleared track shall be less than 5.3×10^{-4} (less than 1 hour in 1,887 flight hours).

(c) The proportion of the total flight time spent by aircraft between 50 NM and 70 NM (92.6 Km and 129.6 Km) off the cleared track shall be less than 13×10^{-5} (less than 1 hour in 7,693 flight hours.)

Section 3

Air traffic control (ATC) may authorize an aircraft operator to deviate from the requirements of § 91.705 for a specific flight if, at the time of flight plan filing for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden upon, the operations of other aircraft which meet the requirements of § 91.705.

Appendix D—Airports/Locations Where the Transponder Requirements of Section 91.215(b)(5)(ii) Apply

Section 1

The requirements of § 91.215(b)(5)(ii) apply to operations in the vicinity of each of the following airports. Logan International Airport, Billings MT, Hector International Airport, Fargo, ND.

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum.....	$\pm 0.125\%$ per hour.....	1.....	1 sec.

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 4 read out
Indicated Airspeed.....	Vso to VD (KIAS).....	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1.....	1%3
Altitude.....	−1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51-a).	11.....	25 to 150 ft.
Magnetic Heading.....	360°.....	±5°.....	1.....	1°
Vertical Acceleration.....	−3g to +6g.....	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration.....	±1.0g.....	±1.5% max. range excluding datum error of ±5%.	2.....	0.01g.
Pitch Attitude.....	100% of usable.....	±2°.....	1.....	0.8°
Roll Attitude.....	±60° or 100% of usable range, whichever is greater.	±2°.....	1.....	0.8°
Stabilizer Trim Position, or.....	Full Range.....	±3% unless higher uniquely required.	1.....	1%3
Pitch Control Position.....	Full Range.....	±3% unless higher uniquely required.	1.....	1%3
Engine Power, Each Engine:	Full Range.....	±3% unless higher uniquely required.	1.....	1%3
Fan or N1 Speed or EPR or Cockpit indications Used for Aircraft Certification OR.	Maximum Range.....	±5%.....	1.....	1%3
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed)..... 1 (torque).....	1%3 1%3
Altitude Rate ² (need depends on altitude resolution).	±8,000 fpm.....	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1.....	250 fpm. below 12,000
Angle of Attack ² (need depends on altitude resolution).	−20° to 40° or 100% of usable range.	±2°.....	1.....	0.8%3
Radio Transmitter Keying (Discrete).	On/Off.....		1.....	
TE Flaps (Discrete or Analog).....	Each discrete position (U, D, T/O, AAP) OR.		1.....	
LE Flaps (Discrete or Analog).....	Analog 0-100% range.....	±3%.....	1.....	1%3
	Each discrete position (U, D, T/O, AAP) OR.		1.....	
Thrust Reverser, Each Engine (Discrete).	Analog 0-100% range.....	±3°.....	1.....	1%3
Spoiler/Speedbrake (Discrete).	Stowed or full reverse.....		1.....	
	Stowed or out.....		1.....	
Autopilot Engaged (Discrete).....	Engaged or Disengaged.....		1.....	

1 When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

2 If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

3 Per cent of full range.

4 This column applies to aircraft manufactured after October 11, 1991.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system 1 minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum.....	±0.125% per hour.....	1.....	1 sec.
Indicated Airspeed.....	VM in to VD (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1.....	1 kt.
Altitude.....	−1,000 ft. to 20,000 ft. pressure altitude.	±100 to ±700 ft. (see Table 1, TSO C51-a).	1.....	25 to 150 ft.
Magnetic Heading.....	360°.....	±5°.....	1.....	1°
Vertical Acceleration.....	−3g to +6g.....	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration.....	±1.0g.....	±1.5% max. range excluding datum error of 5%.	2.....	0.03g.
Pitch Attitude.....	100% of usable range.....	±2°.....	1.....	0.8°
Roll Attitude.....	±60° or 100% of usable range, whichever is greater.	±2°.....	1.....	0.8°
Altitude Rate.....	±8,000 fpm.....	±10% Resolution 250 fpm below 12,000 ft. indicated.	1.....	250 fpm below 12,000.
Engine Power, Each Engine				
Main Rotor Speed.....	Maximum Range.....	±5%.....	1.....	1%2.
Free or Power Turbine.....	Maximum Range.....	±5%.....	1.....	1%2.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ³ read out
Engine Torque	Maximum Range	±5%	1	1% ²
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary—if applicable (Discrete)	High/Low		1	
Radio Transmitter Keying (Discrete)	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status—Engaged (Discrete)	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% ²
Pedal Position	Full range	±3%	2	1% ²
Lat. Cyclic	Full range	±3%	2	1% ²
Long. Cyclic	Full range	±3%	2	1% ²
Controllable Stabilator Position	Full range	±3%	2	1% ²

¹ When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

² Per cent of full range.

³ This column applies to aircraft manufactured after October 11, 1991.

PART 1—DEFINITIONS AND ABBREVIATIONS

2. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 1.1 [Amended]

3. By amending § 1.1 by changing the cross reference “§ 91.10” found in the definition of “Operate” to “§ 91.13.”

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

4. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR NO. 29-4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR No. 29-4 [Amended]

5. By amending SFAR 29-4 located in part 21, paragraph 4, by changing the cross reference “§ 91.23(a)(3)” to “§ 91.167(a)(3).”

§ 21.81 [Amended]

6. By amending § 21.81(a) by changing the cross reference “§ 91.41” to “§ 91.317.”

§ 21.83 [Amended]

7. By amending § 21.83(a) and (b) by changing the cross reference “§ 91.41” to “§ 91.317” in each paragraph.

§ 21.85 [Amended]

8. By amending § 21.85(f) by changing the cross reference “§ 91.41” to “§ 91.317.”

§ 21.221 [Amended]

9. By amending § 21.221(a)(2) and (e) by changing the cross reference “§ 91.41” to “§ 91.317.”

§ 21.223 [Amended]

10. By amending § 21.223(a)(2) and (f) by changing the cross reference “§ 91.41” to “§ 91.317.”

§ 21.225 [Amended]

11. By amending § 21.225(a)(2) and (e) by changing the cross reference “§ 91.41” to “§ 91.317.”

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

12. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix G, Part 23 [Amended]

13. By amending § G23.4 in appendix G in part 23 by changing the cross reference “§ 91.163” to “§ 91.403.”

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

14. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix H, Part 25 [Amended]

15. By amending § H25.4 in appendix H in part 25 by changing the cross reference “§ 91.163” to “§ 91.403.”

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

16. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 27 [Amended]

17. By amending § A27.4 in appendix A in part 27 by changing the cross reference “§ 91.163” to “§ 91.403.”

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

18. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 29 [Amended]

19. By amending § A29.4 in appendix A in part 29 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

20. The authority citation for part 31 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 31 [Amended]

21. By amending § A31.4 in appendix A in part 31 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

22. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 33 [Amended]

23. By amending § A33.4 in appendix A in part 33 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

24. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix A, Part 35 [Amended]

25. By amending § A35.4 in appendix A in part 35 by changing the cross reference "§ 91.163" to "§ 91.403."

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

26. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 *et seq.*; Sec. 124 of Pub. L. 08-473, E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 36.1583 [Amended]

27. By amending § 36.1583(b) by changing the cross reference "§ 91.56" to "§ 91.815."

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

28. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 43.5 [Amended]

29. By amending § 43.5(c) by changing the cross reference "§ 91.31" to "§ 91.9."

§ 43.15 [Amended]

30. By amending § 43.15(a)(2) by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.16 [Amended]

31. By amending § 43.16 by changing the cross reference "§ 91.169(e)" to "§ 91.409(e)."

§ 43.17 [Amended]

32. By amending § 43.17(a)(2) by changing the cross reference "§ 91.169" to "§ 91.409."

Appendix B, Part 43 [Amended]

33. By amending appendix B in part 43 by changing the cross reference "§ 91.173" to "§ 91.417" in paragraph (d).

Appendix E, Part 43 [Amended]

34. By amending appendix E in part 43 by changing the cross reference "§ 91.171" to "§ 91.411" in the introductory paragraph.

Appendix F, Part 43 [Amended]

35. By amending appendix F in part 43 by changing the cross reference "§ 91.172" to "§ 91.413 in the introductory paragraph."

PART 45—IDENTIFICATION AND REGISTRATION MARKING

36. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 45.22 [Amended]

37. By amending § 45.22(a)(3)(ii) by changing the cross reference "§ 91.83" to read "either § 91.153 or § 91.169."

PART 47—AIRCRAFT REGISTRATION

38. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1403, 1405, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 4 U.S.T. 1830.

§ 47.9 [Amended]

39. By amending § 47.9(f)(1)(i) by changing the cross reference "§ 91.173(a)(2)(i)" to "§ 91.417(a)(2)(i)."

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

40. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 61.15 [Amended]

41. By amending § 61.15(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 61.16 [Amended]

42. By amending § 61.16, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

§ 61.118 [Amended]

43. By amending § 61.118(d)(5) by changing the cross reference "§ 91.169" to "§ 91.409."

§ 61.153 [Amended]

44. By amending § 61.153(a) by changing the cross reference "§§ 91.1 through 91.9 and subpart B of part 91" to "§§ 91.1, 91.3, 91.5, 91.11, 91.13, 91.103, 91.105, 91.189, 91.193, 91.703, and subpart B of part 91."

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

45. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 63.12 [Amended]

46. By amending § 63.12(b) by changing the cross reference "§ 91.11(a) or § 91.12(a)" to "§ 91.17(a) or § 91.19(a)."

§ 63.12a [Amended]

47. By amending § 63.12a, introductory text, by changing the cross reference "§ 91.11(c) or (d)" to "§ 91.17(c) or (d)."

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

48. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 65.12 [Amended]

49. By amending § 65.12(b) by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

50. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

SFAR No. 45-1

SFAR 45-1 [Amended]

51. By amending SFAR 45-1, paragraph 4, in part 71 by changing the cross reference "§ 91.5" to "§ 91.103."

§ 71.17 [Amended]

52. By amending § 71.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

PART 91—GENERAL OPERATING AND FLIGHT RULES

53. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

SFAR No. 29-4—LIMITED IFR OPERATIONS OF ROTORCRAFT

SFAR 29-4 [Amended]

54. By amending paragraph 4 in SFAR 29-4 in part 91 by changing the cross reference "§ 91.23(a)(3)" to "§ 91.167(a)(3)."

SFAR No. 44-5—AIR TRAFFIC CONTROL SYSTEM INTERIM OPERATIONS PLAN

SFAR 44-5 [Amended]

55. By amending paragraphs 1, 2(a), and 7 in SFAR 44-5 in part 91 by changing the cross reference "§ 91.100" to "§ 91.139."

SFAR No. 50-2—SPECIAL FLIGHT RULES IN THE VICINITY OF THE GRAND CANYON NATIONAL PARK

56. By amending the Note following section 3(a) in SFAR 50-2 in part 91 by changing the cross reference "§ 91.79" to "§ 91.119."

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

57. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49

U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 93.111 [Amended]

58. By amending § 93.111 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.113 [Amended]

59. By amending § 93.113 by changing the cross reference "§ 91.107" to "§ 91.157."

§ 93.183 [Amended]

60. By amending § 93.183(b)(3) by changing the cross reference "§ 91.24" to "§ 91.215."

§ 93.199 [Amended]

61. By amending § 93.199(c) by changing the cross reference "§ 91.127" to "§ 91.185."

PART 99—SECURITY CONTROL OF AIR TRAFFIC

62. The authority citation for part 99 continues to read as follows:

Authority: 49 U.S.C. 1348, 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 99.11 [Amended]

63. By amending § 99.11(b)(1) by changing the cross reference "§ 91.83" to "91.169," and by amending § 99.11(b)(2) by changing the cross reference "§§ 91.83(a) (1) through (7)" to "§§ 91.153(a) (1) through (6)."

§ 99.17 [Amended]

64-65. By amending § 99.17(a) by changing the cross reference "§ 91.125" to "§ 91.183."

§ 99.27 [Amended]

66-67. By amending § 99.27(a) by changing the cross reference "§ 91.75" to "§ 91.123."

§ 99.31 [Amended]

68. By amending § 99.31 by changing the cross reference to "§ 91.127" to "§ 91.185."

PART 103—ULTRALIGHT VEHICLES

69. The authority citation for part 103 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421(a), 1422, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 103.20 [Amended]

70. By amending § 103.20 by changing the cross reference "§ 91.102 or § 91.104" to "§ 91.143 or § 91.141."

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

71. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 121.1 [Amended]

72. By amending § 121.1(f) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 121.15 [Amended]

73. By amending § 121.15 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 121.207 [Amended]

74. By amending § 121.207, introductory text, by changing the cross reference "§ 91.41" to "§ 91.317."

§ 121.579 [Amended]

75. By amending § 121.579(b)(1) and (2) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.649 [Amended]

76. By amending § 121.649(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 121.657 [Amended]

77. By amending § 121.657(a) by changing the cross reference "§ 91.79" to "§ 91.119."

§ 121.667 [Amended]

78. By amending § 121.667(b) by changing the cross reference "§ 91.83" to "§§ 91.153 and 91.169."

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

79. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 125.23 [Amended]

80. By amending § 125.23(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 125.39 [Amended]

81. By amending § 125.39 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 125.329 [Amended]

82. By amending § 125.329(c) by changing the cross reference "§ 91.105" to "§ 91.155."

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

83. The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 127.1 [Amended]

84. By amending § 127.1(b) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 127.22 [Amended]

85. By amending § 127.22 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 127.85 [Amended]

86. By amending § 127.85 by changing the cross reference "§ 91.41" in the introductory paragraph to "§ 91.317."

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

87. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 133.14 [Amended]

88. By amending § 133.14 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

89. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 135.1 [Amended]

90. By amending § 135.1(b)(10) by changing the cross reference "§ 91.59" to "§ 91.321."

§ 135.3 [Amended]

91. By amending § 135.3(b) by changing the cross reference "§ 91.1(c)" to "§ 91.703(b)."

§ 135.41 [Amended]

92. By amending § 135.41 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 135.71 [Amended]

93. By amending § 135.71 by changing the cross reference "§ 91.189" to "§ 91.409."

§ 135.93 [Amended]

94. By amending § 135.93(c) by changing the cross reference "§ 91.105" to "§ 91.155."

§ 135.211 [Amended]

95. By amending § 135.211(a)(2) by changing the cross reference "§ 91.116(f)" to "§ 91.175(f)."

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

96. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 1348(c), 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 137.23 [Amended]

97. By amending § 137.23 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 137.43 [Amended]

98. By amending § 137.43(c) by changing the cross reference "§ 91.107(e)" to "§ 91.157(e)."

§ 137.53 [Amended]

99. By amending § 137.53(c)(1)(ii) by changing the cross reference "§ 91.217" to "§ 91.409."

PART 141—PILOT SCHOOLS

100. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 141.18 [Amended]

101. By amending § 141.18 by changing the cross reference "§ 91.12(a)" to "§ 91.19(a)."

§ 141.41 [Amended]

102. By amending § 141.41(a) (1)(iii) and (2)(iii) by changing the cross reference "§ 91.33" to "§ 91.205."

Issued in Washington, DC, on August 7, 1989.

James B. Busey,
Administrator.

[FR Doc. 89-18775 Filed 8-17-89; 8:45 am]

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50 Part 1400

Friday
August 18, 1989

Part III

Department of Veterans Affairs

38 CFR Parts 14, 19, and 20

Appeals Regulations; Rules of Practice;
Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14, 19, and 20

RIN 2900-AE02

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Judicial Review Act establishes judicial review of Board of Veterans' Appeals decisions, facilitates greater involvement of private attorneys-at-law in the appeals process at the Department level, and makes other changes affecting appeals. The Board of Veterans' Appeals has completely revised its Appeals Regulations and Rules of Practice to accommodate these changes and to generally update these regulatory provisions. Conforming revisions have also been made to part 14.

DATES: Comments must be submitted on or before September 18, 1989. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the address below, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Comments will be available for public inspection until September 27, 1989. It is proposed to make these changes effective the date of their final publication in the *Federal Register*.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jan Donsbach, Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-2978).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act: Sections 20.202 and 20.602 of this regulation contain information collection requirements. The public reporting burden for these collections of information are: § 20.202 is one hour per response and § 20.602 is 10 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve these information collection requirements. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Joseph F. Lackey.

In the comments which follow, the Veterans' Judicial Review Act is cited as Public Law 100-687. In addition to substantive changes, the Appeals Regulations and Rules of Practice have been reorganized for greater usefulness. The Appeals Regulations are now the primary source of regulatory provisions concerning the internal operations of Department of Veterans Affairs field facilities and the Board of Veterans' Appeals with respect to appeals processing while the Rules of Practice are the primary source of information of interest to appellants and their representatives concerning their rights and responsibilities in the appeals process. The Appeals Regulations remain in part 19, while the Rules of Practice have been placed in new part 20. Both the Rules of Practice and the Appeals Regulations have been renumbered, reserving numbers between major subdivisions so that they may be expanded logically in the future when the need arises. The material has been reorganized so that related material appears together. More detailed information has been provided in anticipation of involvement of private attorneys who may not be familiar with the Department of Veterans Affairs adjudication process. Title changes related to the conversion of the Veterans' Administration to the Department of Veterans Affairs have been made throughout. (See Public Law 100-527.) Numerous editorial revisions have been made. Citations to authority have been revised and updated. The cross-references which previously appeared at the end of sections have been consolidated into appendices.

The following changes have been made in part 14:

- § 14.634: Removed.
- § 14.635: Removed.
- § 14.636: Redesignated as § 14.634. Citation to authority and cross-references added.
- § 14.637: Redesignated as § 14.635. Cross-references added.

The following changes have been made in part 19:

- § 19.1: Revised. Based on old Rule of Practice 8 (38 CFR 19.108).
- § 19.2: Revised. Based on old Rule of Practice 9 (38 CFR 19.109).
- § 19.3: Revised. Based on old Rule of Practice 10 (38 CFR 19.110). Changes to paragraph (a) based on section 201(a) of Public Law 100-687. Material added to paragraph (b) provides for designation and redesignation of Chief Members.
- § 19.4: Revised. Based on old Rule of Practice 11 (38 CFR 19.111).
- § 19.5: Revised. Based on old Rule of Practice 3 (38 CFR 19.103).
- § 19.6: Revised. Based on old Rule of Practice 61 (38 CFR 19.161). Material removed from first sentence. The Board Members serving on the hearing panel are not always the Members who make the appellate decision (e.g., Travel Board hearing in a radiation case).
- § 19.7: Added. Based on old Rule of Practice 80 (38 CFR 19.180). Revisions based on sections 203, 205, and 206 of Public Law 100-687.
- § 19.8: Added. Based on old Rule of Practice 16 (38 CFR 19.116). Changes based on section 205 of Public Law 100-687.
- § 19.9: Added. Based on old Rule of Practice 82, paragraph (a) (38 CFR 19.182(a)).
- § 19.10: Added. Based on old Rule of Practice 88 (38 CFR 19.188). Revised to reflect the development by remand in reconsideration cases which is appropriate to reconsideration of a prior Board of Veterans Appeals decision.
- § 19.11: Added. Based on old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)), and on old Rule of Practice 90 (38 CFR 19.190). Completely rewritten. Changes in provisions for determining the number of Board Members on reconsideration panels have been made to give more flexibility in view of the requirement of a majority opinion. Because a majority opinion, as opposed to an unanimous decision, can now constitute a final decision, a nine Member panel may be necessary in order to break tie votes. Material added to explain that Members who conduct Travel Board reconsideration hearings will be included in the reconsideration panel.
- § 19.12: Added. Based on old Rule of Practice 83 (38 CFR 19.183). Paragraph (c), which permits the Chairman to disqualify a Member of the Board from acting in an appeal under certain circumstances, added.
- § 19.13: Added. Based on old 38 CFR 19.5.
- § 19.14: Added. Describes matters to be addressed in appeals which involve

prior final determination by the agency of original jurisdiction.

§ 19.15: Added. Delegates authority to take various actions.

§ 19.25: Added. Based on old Rule of Practice 14 (38 CFR 19.114). Revised to include a requirement of notification of the appellate rights which were added by section 301 of Public Law 100-687.

§ 19.26: Added. Based on old Rule of Practice 19 (38 CFR 19.119).

§ 19.27: Added. Based on old Rule of Practice 34 (38 CFR 19.134).

§ 19.28: Added. Based on old Rule of Practice 36 (38 CFR 19.136). Material added to make it clear that whether a Notice of Disagreement is adequate is an appealable issue, as was implicit in the old rule.

§ 19.29: Added. Based on old Rule of Practice 20 (38 CFR 19.120). Changes to item (b) in the list of information which must be included in the Statement of the Case based on section 206 of Public Law 100-687.

§ 19.30: Added. Based on old Rule of Practice 21 (38 CFR 19.121). Changes based on section 206 of Public Law 100-687. Paragraph (b) previously described in detail information provided to appellants and their representatives concerning the completion of the VA Form 1-9. Inasmuch as the information is furnished with the form, repeating it in the rule is redundant.

§ 19.31: Added. Primarily based on old Rule of Practice 22 (38 CFR 19.122). On occasion, the Board will determine that a Supplemental Statement of the Case is not necessary following a remand. (An example of such a remand might be a request for an X-ray film which the Board desires to send to an independent medical expert as part of a request for an advisory medical opinion pursuant to Rule 901, paragraph (d) (§ 20.901(d)).) The second sentence of this rule has been modified to allow for this contingency. Some of the concepts concerning post-remand Supplemental Statements of the Case previously found in old Rule 82, paragraph (b) (§ 19.182(b)), have also been incorporated into this rule. The rule has been revised to require that a Supplemental Statement of the Case be provided following a hearing on appeal conducted by field personnel if documentary evidence or evidence in the form of testimony concerning relevant facts or expert opinion is presented at the hearing.

§ 19.32: Added. Based on old Rule of Practice 24 (38 CFR 19.124).

§ 19.33: Added. Based on old Rule of Practice 33 (38 CFR 19.133).

§ 19.34: Added. Based on old Rule of Practice 35 (38 CFR 19.135). Material added to make it clear that whether a

Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue, as was implicit in the old rule.

§ 19.35: Added. Based on old Rule of Practice 23, paragraph (b) (38 CFR 19.123(b)).

§ 19.36: Added. Based on old Rule of Practice 74, paragraph (a) (38 CFR 19.174(a)).

§ 19.37: Added. Based on old Rule of Practice 73 (38 CFR 19.173). Additional information added to paragraph (a) concerning when a Supplemental Statement of the Case is required.

§ 19.38: Added. Based on old Rule of Practice 82, paragraphs (b) and (c) (38 CFR 19.182 (b) and (c)). Extensively revised to describe the action taken by the agency of original jurisdiction when a case is remanded by the Board of Veterans Appeals. (Not all of the material in old paragraph (b) is included in this new section. Some of the material previously in paragraph (b) overlapped material found in old Rule of Practice 22 (§ 19.122) and has been incorporated into the revisions to § 19.31, which is based on old Rule of Practice 22.)

§ 19.50: Added. Based on old Rule of Practice 38 (38 CFR 19.138).

§ 19.51: Added. Based on old Rule of Practice 39 (38 CFR 19.139).

§ 19.52: Added. Based on old Rule of Practice 40 (38 CFR 19.140). (Some of the concepts previously found in old Rule of Practice 40 are also found in new Rule of Practice 400 (§ 20.400).)

§ 19.53: Added. Based on old 38 CFR 19.4.

§ 19.75: Added. Establishes requirement that Department of Veterans Affairs facilities generating appeals activity maintain a Travel Board hearing docket. Such dockets are necessary in view of the requirement of new 38 U.S.C. 4010, added by section 207 of Public Law 100-687, that Travel Board hearings be scheduled in the order in which the requests for such hearings are received.

§ 19.76: Added. Establishes procedures for notifying appellants and their representatives of the time and place of Travel Board hearings.

§ 19.77: Added. Provides that a Statement of the Case is to be provided to an appellant and his or her representative not later than the date that notification of the time and place of a Travel Board hearing is provided.

§ 19.100: Added. Based on old Rule of Practice 43 (38 CFR 19.143). The first sentence of this rule has been deleted. Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule of Practice 3 (§ 20.3).

§ 19.101: Revised. Based on old Rule of Practice 46 (38 CFR 19.146).

§ 19.102: Revised. This regulation and Rule of Practice 502 (§ 20.502) are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. This Appeal Regulation addresses the former while Rule 502 addresses the latter. This regulation provides that a copy of the actual Substantive Appeal will be furnished to the other contesting parties.

§§ 19.103-19.201 Removed.

Appendix A to Part 19: Added. Consolidates cross-references which previously appeared at the end of individual sections.

The following sections have been added to new Part 20:

§ 20.1: Rule 1. Based on old Rule of Practice 1 (38 CFR 19.101). Old paragraph (a) removed. The authorities for the provisions of this rule are cited at the end of each paragraph of the rule in compliance with 38 U.S.C. 210(c)(1). (Where the same authorities apply to all paragraphs, the authorities are found at the end of the rule.) Subsequent paragraphs appropriately redesignated. The second sentence of old paragraph (b) has been removed. The removed material is the basis for new Rule 2 (§ 20.2).

§ 20.2: Rule 2. Based on material previously found in old Rule of Practice 1, paragraph (b) (38 CFR 19.101(b)).

§ 20.3: Rule 3. Gives definitions of various terms used throughout the Rules of Practice.

§ 20.100: Rule 100. Based on old Rule of Practice 7 (38 CFR 19.107). Some items which are mailed to the Board (e.g., certain motions) are addressed to an office other than that of the Chairman. Paragraph (c) has been revised to allow for these exceptions.

§ 20.101: Rule 101. The material which was previously in old Rule of Practice 12 (38 CFR 19.112), which concerned the Board's jurisdiction, has been removed. Former paragraph (a) repeated information which was already contained in § 19.1. Former paragraph (b) was more in the nature of a cross reference than a substantive rule. This revised rule, concerning the same subject, is based on material previously found in 38 CFR 19.1 through 19.3. The first portion of paragraph (a) is based on paragraph (a) of old § 19.1. Revisions to the first sentence of paragraph (a) are

based on section 101 of Public Law 100-687. The reference to Administrator's Instructions has been removed from paragraph (a) due to regulatory changes. Examples of jurisdiction previously found in 38 CFR 19.2 have been updated and incorporated into paragraph (a). Paragraph (b) is based on material previously found in 38 CFR 19.3. Paragraph (c) is based on material previously found in paragraph (b) of 38 CFR § 19.1.

§ 20.102: Rule 102. Delegates authority to rule on various motions, etc.

§ 20.200: Rule 200. Based on old Rule of Practice 17 (38 CFR 19.117).

§ 20.201: Rule 201. Based on old Rule of Practice 18 (38 CFR 19.118). The definition of "agency of original jurisdiction" previously included in the first sentence has been removed. Definitions are now in new Rule 3 (§ 20.3). Agencies of original jurisdiction often make determinations on several issues at the same time. Frequently, the claimant will agree with adjudicative action taken on some issues and disagree with action taken with respect to others. Material has been added to point out that when notice is received concerning the disposition of several issues, the claimant or representative should identify which determinations he or she disagrees with in the Notice of Disagreement.

§ 20.202: Rule 202. Based on old Rules of Practice 23, paragraph (a), and 26 (38 CFR 19.123(a) and 19.126). Revisions have been made to note that a Substantive Appeal should make it clear which issues are being appealed when the Statement of the Case and any prior Supplemental Statements of the Case have addressed multiple issues. Amended to note that the Board may dismiss an appeal which fails to allege specific error of fact or law, as provided by 38 U.S.C. 4005(d)(5) and as previously noted in old Rule 26 (§ 19.126), and to incorporate the change to 38 U.S.C. 4005(d)(4) made by Section 206(b) of Public Law 100-687.

§ 20.203: Rule 203. Based on old Rule of Practice 37 (38 CFR 19.137).

§ 20.204: Rule 204. Based on old Rule of Practice 25 (38 CFR 19.125). The vague exception previously found in paragraph (b) has been removed. An appellant has an absolute right to withdraw his or her appeal prior to the promulgation of an appellate decision. Paragraph (c) has been amended to show that a representative may withdraw a Notice of Disagreement or Substantive Appeal personally filed by the appellant if the representative has the written permission of the appellant to do so.

§ 20.300: Rule 300. Based on old Rule of Practice 27 (38 CFR 19.127). On

occasion, because a claimant has moved to another area or for some other reason, applicable files will be transferred from one Department of Veterans Affairs office to another after an action is taken which a claimant wishes to appeal, but before a Notice of Disagreement and/or Substantive Appeal is filed. This rule has been amended to allow for this contingency.

§ 20.301: Rule 301. Based on old Rule of Practice 28 (38 CFR 19.128).

§ 20.302: Rule 302. Based on old Rule of Practice 29 (38 CFR 19.129). Amended to make it clear that this rule does not apply to cases involving simultaneously contested claims. (Time limits for filing in simultaneously contested claims are set out in Rule 501 (§ 20.501).) Paragraph (c) previously pointed out that there must be a response to a Supplemental Statement of the Case which includes new issues which were not included in the Statement of the Case, but it did not indicate the nature of the required response. When new issues are included in a Supplemental Statement of the Case it becomes, in effect, the Statement of the Case with respect to the new issues and the response required is therefore a Substantive Appeal. New material has been added to make this clear. Particularly in view of this situation, the time for responding to a Supplemental Statement of the Case has been lengthened to 60 days. Material has also been added to paragraph (c) to make it clear that the 60-day period allowed for response to a Supplemental Statement of the Case begins with the mailing of the Supplemental Statement of the Case.

§ 20.303: Rule 303. Based on old Rule of Practice 30, paragraph (a) (38 CFR 19.130(a)). Material has been added to allow for filing requests for an extension of time with the office which has assumed jurisdiction over the applicable Department of Veterans Affairs records in cases where the records have been transferred after the action being appealed was taken.

§ 20.304: Rule 304. Based on old Rule of Practice 30, paragraph (b) (38 CFR 19.130(b)).

§ 20.305: Rule 305. Based on old Rule of Practice 31 (38 CFR 19.131). Revised to show that this rule applies to the computation of the time limit for filing any written document, not just to the time limit for filing a Notice of Disagreement or Substantive Appeal. A presumption has been added that the postmark date is five days prior to the receipt of the document in those cases where the postmark is not of record due to the loss of the mailing envelope, etc.

§ 20.306: Rule 306. Based on old Rule of Practice 32 (38 CFR 19.132).

§ 20.400: Rule 400. Based on old Rules of Practice 40 and 41 (38 CFR 19.140 and 19.141). (Some of the concepts previously found in old Rule of Practice 40 are also found in new 38 CFR 19.52.) The last sentence of this rule has been revised. While a representative may act upon behalf of a claimant with his or her authorization, only the claimant may authorize a merged appeal.

§ 20.401: Rule 401. Based on old Rule of Practice 42 (38 CFR 19.142).

§ 20.500: Rule 500. Based on old Rule of Practice 44 (38 CFR 19.144).

§ 20.501: Rule 501. Based on old Rule of Practice 45 (38 CFR 19.145). The definition has been removed from the first sentence of paragraph (a). Definitions, including the definition of "simultaneously contested claim," are now grouped in Rule 3 (§ 20.3). New paragraph (c) added to provide information concerning action to be taken by claimants/appellants and their representatives when a Supplemental Statement of the Case is received in a simultaneously contested claim.

§ 20.502: Rule 502. This rule and new 38 CFR 19.102 are based on old Rule of Practice 47 (38 CFR 19.147). The old rule combined action to be taken by the agency of original jurisdiction, more properly the subject of an Appeal Regulation, with action to be taken by an appellant or representative when notice of the substance of an appeal by another contesting party is received in a simultaneously contested claim. The rewritten rule focuses on the latter. A new Appeal Regulation (§ 19.102) addresses the former. The revised rule provides that a copy of the actual Substantive Appeal will be furnished to all other contesting parties. It also clarifies when the 30-day period allowed for a response commences.

§ 20.503: Rule 503. Based on old Rule of Practice 48 (38 CFR 19.148).

§ 20.504: Rule 504. Based on old Rule of Practice 49 (38 CFR 19.149).

§ 20.600: Rule 600. Based on old Rule of Practice 50 (38 CFR 19.150). Rule revised to make it clear that there is a full right to representation in appellate proceedings before the Board of Veterans Appeals, as well as before the agency of original jurisdiction.

§ 20.601: Rule 601. Based on old Rule of Practice 55, paragraph (a) (38 CFR 19.155(a)).

§ 20.602: Rule 602. Based on old Rule of Practice 51, paragraph (a) (38 CFR 19.151(a)). Material added to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated

prior to initiation of an appeal, provided that the designation has not been revoked.

§ 20.603: Rule 603. Based on old Rule of Practice 52, paragraphs (a) and (b) (38 CFR 19.152 (a) and (b)). Material added to paragraph (a) to point out that an attorney-at law may be designated through the use of a VA Form 2-22a, as well as through the alternative procedure outlined in the rule; that all designations of attorneys-at-law must be to individuals rather than partnerships or firms; that an attorney's authority to act as a representative may be limited as noted in 38 CFR 14.631(d); that a designation of a representative is not effective until it is received by the Department of Veterans Affairs; and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal if the designation has not been revoked. Reference to appellant's guardian removed from the third sentence as unnecessary. (If an individual has a legal guardian, the guardian is the appellant.) The material previously contained in the last sentence of paragraph (a) has been moved to Rule 606 (§ 20.606). Cross-reference material removed from body of paragraph (b). Last sentence of paragraph (b) removed as inappropriate for inclusion in the text of this rule. This material is covered in Rule 606. The new material in paragraph (c) permits an attorney who is associated or affiliated with the attorney of record to assist in appellate representation as provided in 38 CFR 14.629(c).

§ 20.604: Rule 604. Based on old Rule of Practice 53, paragraphs (a) and (b) (38 CFR 19.153 (a) and (b)). Material added to paragraph (a) to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs and to note the existing practice of continuing to recognize a representative designated prior to initiation of an appeal, provided that the designation has not been revoked.

§ 20.605: Rule 605. Based on old Rule of Practice 54, paragraphs (a) and (b) (38 CFR 19.154 (a) and (b)). New paragraph (a) added to clarify the scope of this rule. Old paragraph (a) broken up into paragraphs (b) and (c) for clarity. Material added to new paragraph (c) to recognize the alternative designation procedure described in 38 CFR 14.630, to note that a designation of a representative is not effective until it is received by the Department of Veterans Affairs, and to note the existing practice of continuing to recognize a representative designated prior to

initiation of an appeal, provided that the designation has not been revoked. Old paragraph (b), which has been revised to conform to 38 CFR 14.630, is now paragraph (d).

§ 20.606: Rule 606. Based primarily on old Rule of Practice 56 (38 CFR 19.156). Completely rewritten to give additional information on the use of the services of legal interns, law students, and paralegals in accordance with existing practices. First sentence of paragraph (b) based on material previously found in old Rule 52, paragraph (a) (38 CFR 19.152(a)). Last sentence of paragraph (b) added to make the rule consistent with the provisions of 38 CFR 14.629(c)(4). New paragraph (e) added concerning the withdrawal of permission for legal interns, law students and paralegals to assist in the presentation of appeals.

§ 20.607: Rule 607. Based on old Rule of Practice 51, paragraph (b) (38 CFR 19.151(b)); old Rule of Practice 52, paragraph (c) (38 CFR 19.152(c)); old Rule of Practice 53, paragraph (c) (38 CFR 19.153(c)); and old Rule of Practice 54, paragraph (c) (38 CFR 19.154(c)). Material added to provide additional information on how a designation of representation is revoked and to make it clear that designating a new representative will automatically revoke any prior designation of representation, except for cases in which the designation of a new representative is limited to a specific claim. (With respect to the latter, see 38 CFR 14.631(d).)

§ 20.608: Rule 608. Explains how, and under what circumstances, a representative may withdraw from an appeal.

§ 20.609: Rule 609. Implements Section 104 of Public Law. 100-687. Replaces portions of 38 CFR 14.634 which dealt with representative's fees.

§ 20.610: Rule 610. Part of the implementation of Section 104 of Public Law 100-687. Replaces portions of 38 CFR 14.634 which dealt with representative's expenses and all of 38 CFR 14.635.

§ 20.611: Rule 611. Based on old Rule of Practice 55, paragraphs (b) through (d) (38 CFR 19.155 (b)-(d)). Scope of rule extended to any claimant or appellant, not just veterans. Distinction between surviving spouse and other survivors eliminated as unnecessary and inconsistent with 38 CFR 14.631(e). The old "reasonable time" standard has been replaced by a definite period during which a veteran's representative may continue to represent his or her survivors following his or her death without action on the part of the survivors.

§ 20.700: Rule 700. Based on old Rule of Practice 57 (38 CFR 19.157). Changes have been made throughout to explain that the primary purpose of a personal hearing is to receive testimony from an appellant and witnesses and that, in the absence of such testimony, arguments by representatives should normally be submitted to the Board in the form of a written brief or by submitting an audio cassette for transcription as an informal hearing presentation. Provision is made for allowing a representative to appear in person without the claimant or witnesses in unusual circumstances when good cause is shown. The closing sentence of paragraph (c) has been added. It describes the authority of the presiding Member to curtail the presentation of evidence, testimony, and/or argument which is not relevant or material or which is unduly repetitious.

§ 20.701: Rule 701. Based on old Rule of Practice 58 (38 CFR 19.158). Rule revised to focus on who may present argument. (Testimony is covered elsewhere in a rule pertaining to witnesses. See Rule 710 (§ 20.710).) It is more appropriate to classify Members of Congress and their staffs as witnesses when they appear and present testimony in support of the appeal without being formally designated as representatives by power of attorney.

§ 20.702: Rule 702. Based on old Rule of Practice 59 (38 CFR 19.159). Extensive material added to explain how, and when, changes in hearing dates may be obtained; what action is taken when an appellant fails to appear for a scheduled hearing; and that an appellant may withdraw a hearing request.

§ 20.703: Rule 703. Explains when the right to a hearing before a traveling Section of the Board of Veterans Appeals arises.

§ 20.704: Rule 704. Provides detailed information concerning the scheduling of hearings conducted by traveling Sections of the Board of Veterans Appeals.

§ 20.705: Rule 705. Based on old Rule of Practice 60 (38 CFR 19.160). Language added to clarify that hearings are only conducted at Department of Veterans Affairs facilities which have appropriate support available. (Material in the closing paragraph of old Rule of Practice 60 has been moved to new Rule 707 (§ 20.707).)

§ 20.706: Rule 706. Based on old Rule of Practice 62 (38 CFR 19.162).

§ 20.707: Rule 707. Based on the last paragraph of old Rule 60 (38 CFR 19.160). Revised to provide more detailed information.

§ 20.708: Rule 708. Based on old Rule of Practice 63 (38 CFR 19.163). Revised for clarity and to add information on how prehearing conferences are requested.

§ 20.709: Rule 709. Based on old Rule of Practice 64 (38 CFR 19.164).

§ 20.710: Rule 710. Based on old Rule of Practice 65 (38 CFR 19.165). Material added to paragraph (a) to note that testimony by witnesses extends to presentations by Members of Congress and their staffs. Material concerning attendance of witnesses removed from paragraph (a), inasmuch as a new rule concerning subpoenas has been added.

§ 20.711: Rule 711. Provides information on how and when subpoenas are issued and related matters.

§ 20.712: Rule 712. Based on old Rule of Practice 66 (38 CFR 19.166).

§ 20.713: Rule 713. Based on old Rule of Practice 67 (38 CFR 19.167). Completely rewritten. Allows a single hearing, at which all contesting parties may be present and may present argument and testimony, in simultaneously contested claims. (Previously, separate hearings were conducted for each party.) Provides information on requests for changes in hearing dates in such cases.

§ 20.714: Rule 714. Based on old Rule of Practice 68 (38 CFR 19.168). Paragraphs (a) and (b) amended to show that the applicable case record may be something other than the claims folder. Paragraph (a) amended to provide that requests for hearing transcripts may be made orally at the time of the hearing, as well as in writing at a later time, and that transcripts of Travel Board hearings will be prepared automatically in various types of cases. Paragraph (b) amended to make it clear that the transcript of field hearings prepared by the agency of original jurisdiction is the official record of that hearing.

§ 20.715: Rule 715. Based on old Rule of Practice 69 (38 CFR 19.169). Additional information given on how to make arrangements for private recording of hearings.

§ 20.716: Rule 716. Based on old Rules of Practice 70 and 71 (38 CFR 19.170 and 19.171). Completely rewritten. Specifies that alternate hearing transcripts will not be accepted and explains how corrections in hearing transcripts are obtained.

§ 20.717: Rule 717. Explains actions to be taken when a hearing transcript or tape is lost or damaged.

§ 20.800: Rule 800. Based on old Rule of Practice 72 (38 CFR 19.172). Amended to include a reference to the limitations imposed on the submission of additional

evidence after a case has been certified to the Board of Veterans Appeals.

§ 20.900: Rule 900. Paragraph (a) is based on old Rule of Practice 5 (§ 19.105). Paragraph (b) is based on old Rule of Practice 75 (38 CFR 19.175). Paragraph (c) is based on old Rule of Practice 6 (§ 19.106). Additional information has been provided on motions for advancement on the docket.

§ 20.901: Rule 901. Paragraphs (a) through (c) are based on old Rule of Practice 76 (38 CFR 19.176). New paragraph (d) is based on old Rule of Practice 77 (38 CFR 19.177). New paragraph (e) clarifies who may request an opinion.

§ 20.902: Rule 902. Based on old Rule of Practice 78 (38 CFR 19.178).

§ 20.903: Rule 903. Based on old Rule of Practice 79 (38 CFR 19.179). Amended to conform to 38 U.S.C. 4009(c), added by Section 103 of Public Law 100-687. Material added to clarify when the 60-day period allowed for a response to an opinion commences.

§ 20.904: Rule 904. Based on old Rule of Practice 84 (38 CFR 19.184).

§ 20.905: Rule 905. Based on old Rule of Practice 101 (38 CFR 19.201).

§ 20.1000: Rule 1000. Based on old Rule of Practice 85 (38 CFR 19.185). New paragraph (d) based on Section 202 of Public Law 100-687.

§ 20.1001: Rule 1001. Based on old Rule of Practice 86 (38 CFR 19.186). More detailed information provided on how to file a motion for reconsideration.

§ 20.1002: Rule 1002. Based on old Rule of Practice 87 (38 CFR 19.187). Old paragraph (a) has been broken up into paragraphs (a) and (b). More detailed information concerning the evidence considered on reconsideration of a prior Board of Veterans Appeals decision based upon an allegation of obvious error has been added to paragraph (a). Old paragraph (b) is the basis for new paragraph (c).

§ 20.1003: Rule 1003. Based on old Rule of Practice 89, paragraph (a) (38 CFR 19.189(a)). Reference to personal appearance by representative alone removed, inasmuch as the purpose of a personal hearing is to receive testimony. (Old Rule of Practice 89, paragraph (b) (38 CFR 19.189(b)) is part of the basis for new § 19.11.)

§ 20.1100: Rule 1100. Based on old Rule of Practice 4 (38 CFR 19.104). Revised to conform to 38 U.S.C. 211(a), as amended by Section 101 of Public Law 100-687. Old paragraph (b) has been removed. The material in that paragraph was in the nature of a cross-reference and it has been incorporated into a new cross-reference.

§ 20.1101: Rule 1101. Based on old Rule of Practice 81 (38 CFR 19.181).

Revisions based on sections 202, 203, and 205 of Public Law 100-687. Material added to make it clear when the Board's decisions are final.

§ 20.1102: Rule 1102. Based on old Rule of Practice 91 (38 CFR 19.191).

§ 20.1103: Rule 1103. Based on old Rule of Practice 92 (38 CFR 19.192).

§ 20.1104: Rule 1104. Based on old Rule of Practice 93 (38 CFR 19.193).

§ 20.1105: Rule 1105. Based on old Rule of Practice 94 (38 CFR 19.194).

§ 20.1106: Rule 1106. Based on old Rule of Practice 98 (38 CFR 19.196). The old rule was inconsistent with 38 CFR 3.22(a)(2) which, in effect, requires that it be shown that there was clear and unmistakable error in prior rating decisions which failed to give a veteran a total rating for the required period of time in order to qualify for "410(b)" benefits. (Former 38 U.S.C. 410(b) is now 38 U.S.C. 418, see Section 1403 of Public Law 100-687.) 38 U.S.C. 3504(c) forbids the payment of benefits to any person after September 1, 1959, based on the service of an individual before the date of a treasonous act if that individual's Department of Veterans Affairs benefits have been forfeited for treason. There is a similar prohibition in 38 U.S.C. 3505(a) pertaining to cases involving forfeiture for subversive activities. These provisions are now recognized.

§ 20.1200: Rule 1200. Based on old Rule of Practice 98 (38 CFR 19.198).

§ 20.1201: Rule 1201. Based on old Rule of Practice 99 (38 CFR 19.199).

§ 20.1300: Rule 1300. Based on old Rule of Practice 13 (38 CFR 19.113).

§ 20.1301: Rule 1301. Paragraph (a) based on old 38 CFR 19.6. Supplemental Statements of the Case added to the list of items normally disclosed to appellants. Paragraph (b) based on old Rule of Practice 100 (38 CFR 19.200).

§ 20.1302: Rule 1302. Based on old Rule of Practice 95 (38 CFR 19.195).

§ 20.1303: Rule 1303. Based on old Rule of Practice 97 (38 CFR 19.197).

§ 20.1304: Rule 1304. Based on old Rule of Practice 74, paragraphs (b) through (e) (38 CFR 19.174(b)-(e)).

§ 20.1305: Rule 1305. Based on old Rule of Practice 2 (38 CFR 19.102). Updated.

Appendix A to Part 20: Consolidates cross-references which previously appeared at the end of individual sections.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a \$100 million annual effect on the economy and will not cause a major increase in costs or prices

for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that the proposed regulations would have only a limited, beneficial effect on claimants/appellants and their representatives. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: July 17, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 14, Legal Services, General Counsel, and Part 19, Board of Veterans Appeals, are proposed to be amended, and 38 CFR Part 20, Board of Veterans Appeals: Rules of Practice, is proposed to be added, as follows:

PART 14—[AMENDED]

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

1. In 38 CFR Part 14, Legal Services, General Counsel, remove §§ 14.634 and 14.635 and redesignate §§ 14.636 and 14.637 as new §§ 14.634 and 14.635 respectively.

2. In newly designated § 14.634, remove the last sentence and add an

authority citation and cross-references to read as follows:

§ 14.634 Banks or trust companies acting as guardians.

* * * * *

(Authority: 38 U.S.C. 3403, 3404)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.610 of this chapter.

§ 14.635 [Amended]

3. In newly designated § 14.635, remove the word "Administrator" where it appears and add, in its place, the word "Secretary".

4. In § 14.635, cross-references are added to read as follows:

§ 14.635 Space and office facilities.

* * * * *

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans Appeals. See § 20.610 of this chapter.

5. 38 CFR part 19, Board of Veterans Appeals, is revised to read as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A—Operation of the Board of Veterans' Appeals

Sec.

- 19.1 Establishment of the Board.
 - 19.2 Composition of the Board.
 - 19.3 Appointment, assignment, and rotation of Members.
 - 19.4 Principal functions of the Board.
 - 19.5 Criteria governing disposition of appeals.
 - 19.6 Composition of Board of Veterans' Appeals hearing panels.
 - 19.7 The decision.
 - 19.8 Decision notification.
 - 19.9 Remand for further development.
 - 19.10 Remands in reconsideration cases.
 - 19.11 Reconsideration panel.
 - 19.12 Disqualification of Members.
 - 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
 - 19.14 Decisions involving final determinations by the agency of original jurisdiction.
 - 19.15 Delegation of authority—Appeals Regulations.
- §§ 19.16-19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

- 19.25 Notification by agency of original jurisdiction of right to appeal.

Sec.

- 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
 - 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
 - 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
 - 19.29 Statement of the Case.
 - 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
 - 19.31 Supplemental Statement of the Case.
 - 19.32 Closing of appeal for failure to respond to Statement of the Case.
 - 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
 - 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
 - 19.35 Certification of appeals.
 - 19.36 Notification of certification of appeal and transfer of appellate record.
 - 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
 - 19.38 Action by agency of original jurisdiction when remand received.
- §§ 19.39-19.49 [Reserved]

Subpart C—Administrative Appeals

- 19.50 Nature and form of administrative appeal.
 - 19.51 Officials authorized to file administrative appeals and time limits for filing.
 - 19.52 Notification to claimant of filing of administrative appeal.
 - 19.53 Restriction as to change in payments pending determination of administrative appeals.
- §§ 19.54-19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

- 19.75 Travel Board hearing docket.
 - 19.76 Notice of time and place of Travel Board hearing.
 - 19.77 Providing Statement of the Case when Travel Board hearing has been requested.
- §§ 19.78-19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

- 19.100 Notification of right to appeal in simultaneously contested claims.
- 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
- 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

Appendix A—Cross-References

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—Operation of the Board of Veterans Appeals

§ 19.1 Establishment of the Board.

The Board of Veterans Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members, and professional, administrative, clerical and stenographic personnel.

(Authority: 38 U.S.C. 210, 212, 4001(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are appointed by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 210, 212, 4001(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 4002)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 4002)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or other good cause, a Member of a Section of the Board is unable to participate effectively in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 4002)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 4002, 4004)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 4004(c))

§ 19.6 Composition of Board of Veterans Appeals hearing panels.

A Board of Veterans Appeals hearing panel consists of a presiding Member, and, except as provided in §§ 19.3(d) and 19.11 or this part, two other Board Members. When, after a hearing, a Board Member assigned to a panel is unable to participate in the final decision, the Chairman may assign a substitute.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 4004(a), 4005(d)(4))

(b) *Disposition of issues.* The Board will dispose of each issue on appeal:

(1) By an order granting, denying, or dismissing the appeal in whole or in part with respect to that issue;

(2) By remanding the issue to the agency of original jurisdiction for further development; or

(3) By vacating a prior decision of the Board with respect to that issue.

(Authority: 38 U.S.C. 4004)

(c) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(Authority: 38 U.S.C. 4004(d))

§ 19.8 Decision notification.

After a decision has been rendered by the Board, all parties to the appeal and the representatives, if any, will be notified of the results by the mailing of a copy of the written decision to the parties and their representatives at their last known addresses.

(Authority: 38 U.S.C. 4004(e))

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Section of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 4002, 4004(a))

§ 19.10 Remands in reconsideration cases.

In connection with reconsideration of a prior Board of Veterans Appeals decision, the Board may remand for the purpose of obtaining additional service department records, evidence deemed necessary as a prerequisite for a request for an outside opinion to be obtained pursuant to Rule of Practice 901 (§ 20.901 of this chapter), evidence to be considered in determining whether the Board decision being considered involved the allowance of benefits which was materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, or evidence which was before the Board at the time that the decision being reconsidered was entered which is no longer a part of the appellate record. The Board may also remand the case in order to afford the appellant a hearing on reconsideration, if a request has been received that such a hearing be conducted at a location other than Washington, DC.

(Authority: 38 U.S.C. 4003, 4004(b))

§ 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel to conduct the reconsideration.

(Authority: 38 U.S.C. 4002, 4003)

(b) *Number of members constituting a panel.* When none of the Board Members who participated in the decision being reconsidered is available, the Chairman may assign a panel consisting of three Board Members to conduct the reconsideration. Otherwise, the number of Board Members assigned

to the reviewing panel will be determined by increasing the number of Members who participated in the original decision by not less than three additional Members, in increments of three Members. Except when necessary to obtain a majority opinion, a reconsideration panel will not exceed nine members.

(Authority: 38 U.S.C. 4002, 4003)

(c) *Members included in the reconsideration panel.* The reconsideration panel will include those Members who participated in the original decision who are available, additional Members assigned by the Chairman to substitute for Members who participated in the decision being reconsidered who are no longer available, and additional Members assigned in accordance with paragraph (b) of this section. In the case of Travel Board hearings involving reconsideration of a prior Board decision, the Members of the traveling Section of the Board will be included in the expanded Section established pursuant to paragraph (b) of this section, or will constitute the three-Member reconsideration panel established in accordance with paragraph (b) of this section. If the prior Board decision being reconsidered involves questions concerning radiation, Agent Orange, or asbestos exposure, the traveling Section will be included in an expanded Section which also includes Board Members specializing in those issues.

(Authority: 38 U.S.C. 4002, 4003, 4010)

§ 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 4002)

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board who made the decision on an administrative appeal will disqualify themselves from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 4002, 4006)

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in

paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 4002, 4006)

§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit.

(b) Approve an administrative allowance on an adjudicative determination which has become final by appellate decision or failure to timely appeal.

(c) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 19.14 Decisions involving final determinations by the agency of original jurisdiction.

(a) *Scope of regulation.* This section applies to appeals in cases in which one or more prior determinations by the agency of original jurisdiction with respect to an issue, or issues, currently being appealed have become final because those prior determinations were not appealed within the time allowed by law. It is not applicable to those cases in which any such prior unappealed determination has been superseded by a subsequent Board of Veterans' Appeals or court decision on the same issue, or issues.

(b) *Decisions involving prior final agency of original jurisdiction determinations.* Prior relevant determinations by the agency of original jurisdiction which have become final because they were not appealed in the time allowed by law will be identified in Board of Veterans' Appeals decisions. Such identification will include the date of each such determination, the date that the claimant was notified of the determination, and an indication that the relevant determination was not appealed. If error in a prior unappealed determination is alleged by either an appellant or his or her representative, the decision will include a sufficient description of the evidence which was of record prior to each such determination to support an informed discussion of whether each such determination was or was not clearly and unmistakably erroneous and, if such error is not found, a sufficient description of the evidence which has been added to the record since the last such prior final determination to support

an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. If error is not alleged, the evidence which was of record prior to the unappealed determinations and the evidence which has been added to the record since the last such prior final determination will be identified in such a manner as to show whether it was received before or after the last such prior final determination and will be described in sufficient detail to support an informed discussion of whether such evidence furnishes a new factual basis for the grant of the benefit, or benefits, involved. The decision will also include references to relevant laws and regulations, findings of fact, and conclusions of law pertaining to the finality of prior unappealed determinations by the agency of original jurisdiction. If the benefit sought on appeal cannot be otherwise granted, consideration shall be given to a recommendation for an administrative allowance.

(Authority: 38 U.S.C. 4005)

§ 19.15 Delegation of authority—appeals regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(d), 19.6, 19.11(a), and 19.11(b) of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 19.16–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 4005(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant

at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 1-9, Appeal to Board of Veterans' Appeals.

(Authority: 38 U.S.C. 4005)

§ 19.31 Supplemental Statement of the Case.

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise. A Supplemental Statement of the Case is required following a hearing on appeal before field personnel when new documentary evidence or evidence in the form of testimony concerning the relevant facts or expert opinion is presented, but is not required if only argument is presented.

(Authority: 38 U.S.C. 4005(d))

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a response is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the

appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 4005(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 4005, 4006)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 4005)

§ 19.35 Certification of appeals.

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans Appeals. Certification is accomplished by the execution of VA Form 1-8, Certification of Appeal. Its purpose is to identify the issues for appellate consideration and to serve as a check list for the originating agency to ensure that the appeals development procedures have been adequate, particularly as they affect the appellant's due process rights.

(Authority: 38 U.S.C. 4005)

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the claimant and his or her representative, if any, will be notified in writing.

(Authority: 38 U.S.C. 4005)

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) *Evidence received prior to transfer of records to Board of Veterans Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans Appeals after an appeal has

been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 4005(d)(1))

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 30-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 19.39-19.49 [Reserved]

Subpart C—Administrative Appeals

§ 19.50 Nature and form of administrative appeal.

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 4006)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office—(1) Officials.* The Chief Benefits Director or a Service Director of the Veterans Benefits Administration, the Chief Medical Director or a service director of the Veterans Health Services and Research Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction—(1) Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The Date of Mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 4006)

§ 19.52 Notification to claimant of filing of administrative appeal.

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 4006)

§§ 19.54-19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

- (1) The date that each request for a Travel Board hearing was received,
- (2) The name of the appellant,
- (3) The name of the representative,
- (4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 4010)

§ 19.76 Notice of time and place of Travel Board hearing.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a Travel Board hearing not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled Travel Board hearing with good cause. The requirement will also be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled Travel Board hearing.

(Authority: 38 U.S.C. 4010)

§ 19.77 Providing Statement of the Case when Travel Board hearing has been requested.

If not previously furnished, the appellant and his or her representative

will be provided with a Statement of the Case not later than the date on which the agency of original jurisdiction furnishes them with notification of the place and time of the Travel Board hearing. A Statement of the Case is not required when the only issue to be considered by the traveling Section of the Board is the reconsideration of a prior Board of Veterans Appeals decision.

(Authority: 38 U.S.C. 4005(d)(1), 4010)

§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 4005A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 1–9, Appeal to Board of Veterans Appeals.

(Authority: 38 U.S.C. 4005A(b))

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, a copy of the Substantive Appeal will be furnished to the other contesting parties.

(Authority: 38 U.S.C. 4005A(b))

Appendix A to Part 19—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b).....	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303.....	Rule 1303. Nonprecedential nature of Board decisions.
19.7	38 CFR 20.905.....	Rule 905. Vacating a decision.
19.13	38 CFR 2.66.....	Contains similar provisions.
19.14	38 CFR 19.13(b).....	See re administrative allowances.
	38 CFR 20.1103.....	Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.
	38 CFR 20.1104.....	Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.
19.25	38 CFR 19.52.....	Notification to claimant of filing of administrative appeal.
	38 CFR 19.100.....	Notification of right to appeal in simultaneously contested claims.
19.26	38 CFR 20.302.....	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
19.27	38 CFR 19.50–19.53.....	See re administrative appeals.
19.30	38 CFR 20.202.....	Rule 202. Substantive Appeal.
19.32	38 CFR 20.302.....	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
	38 CFR 20.501.....	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
19.33	38 CFR 19.50–19.53.....	See re administrative appeals.
19.50	38 CFR 19.53.....	Restriction as to change in payments pending determination of administrative appeals.
19.100	38 CFR 20.713.....	Rule 713. Hearings in simultaneously contested claims.
19.101	38 CFR 19.30.....	Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

6. New Part 20, Board of Veterans Appeals: Rules of Practice, is added to 38 CFR Chapter I to read as follows:

PART 20—BOARD OF VETERANS APPEALS: RULES OF PRACTICE

Subpart A—General

- 20.1 Rule 1. Purpose and construction of Rules of Practice.
- 20.2 Rule 2. Procedure in absence of specific Rule of Practice.
- 20.3 Rule 3. Definitions.
- §§ 20.4–20.99 [Reserved]

Subpart B—The Board

- 20.100 Rule 100. Name, business hours, and mailing address of the Board.
- 20.101 Rule 101. Jurisdiction of the Board.

- 20.102 Rule 102. Delegation of authority—Rules of Practice.

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

- 20.200 Rule 200. What constitutes an appeal.
- 20.201 Rule 201. Notice of Disagreement.
- 20.202 Rule 202. Substantive Appeal.
- 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.
- 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.
- §§ 20.205–20.299 [Reserved]

Subpart D—Filing

- 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.
- 20.301 Rule 301. Who can file an appeal.

- 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

- 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

- 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

- 20.305 Rule 305. Computation of time limit for filing.

- 20.306 Rule 306. Legal holidays.

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

- 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

§§ 20.402-20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.

§§ 20.505-20.599 [Reserved]

Subpart G—Representation

20.600 Rule 600. Right to representation.
20.601 Rule 601. Only one representative recognized.

20.602 Rule 602. Representation by recognized organizations.

20.603 Rule 603. Representation by attorneys-at-law.

20.604 Rule 604. Representation by agents.

20.605 Rule 605. Other persons as representative.

20.606 Rule 606. Legal interns, law students and paralegals.

20.607 Rule 607. Revocation of a representative's authority to act.

20.608 Rule 608. Withdrawal of services by a representative.

20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans' Appeals.

20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans' Appeals.

20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

§§ 20.612-20.699 [Reserved]

Subpart H—Hearings on Appeal

20.700 Rule 700. General.

20.701 Rule 701. Who may present oral argument.

20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.

20.703 Rule 703. When right to Travel Board hearing arises.

20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

20.705 Rule 705. Where hearings on appeal are conducted.

20.706 Rule 706. Functions of the presiding Member.

20.707 Rule 707. When a hearing panel makes the final appellate decision.

20.708 Rule 708. Prehearing conference.

20.709 Rule 709. Procurement of additional evidence following a hearing.

20.710 Rule 710. Witnesses at hearings.

20.711 Rule 711. Subpoenas.

20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings.

20.713 Rule 713. Hearings in simultaneously contested claims.

20.714 Rule 714. Record of hearing.

20.715 Rule 715. Recording of hearing by appellant or representative.

20.716 Rule 716. Correction of hearing transcripts.

20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

§§ 20.718-20.799 [Reserved]

Subpart I—Evidence

20.800 Rule 800. Submission of additional evidence after initiation of appeal.

§§ 20.801-20.899 [Reserved]

Subpart J—Action by the Board

20.900 Rule 900. Order of consideration of appeals.

20.901 Rule 901. Medical opinions and opinions of the General Counsel.

20.902 Rule 902. Filing of requests for the procurement of opinions.

20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

20.904 Rule 904. Administrative allowance.

20.905 Rule 905. Vacating a decision.

§§ 20.906-20.999 [Reserved]

Subpart K—Reconsideration

20.1000 Rule 1000. When reconsideration is accorded.

20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

20.1002 Rule 1002. Evidence considered on reconsideration.

20.1003 Rule 1003. Hearings on reconsideration.

§§ 20.1004-20.1099 [Reserved]

Subpart L—Finality

20.1100 Rule 1100. Finality of decisions of the Board.

20.1101 Rule 1101. When decisions of the Board become final.

20.1102 Rule 1102. Harmless error.

20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

20.1105 Rule 1105. New claim after promulgation of appellate decision.

20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

§§ 20.1107-20.1199 [Reserved]

Subpart M—Privacy Act

20.1200 Rule 1200. Privacy Act request—appeal pending.

20.1201 Rule 1201. Amendment of appellate decisions.

§§ 20.1202-20.1299 [Reserved]

Subpart N—Miscellaneous

20.1300 Rule 1300. Access to Board records.
20.1301 Rule 1301. Disclosure of information.

20.1302 Rule 1302. Death of appellant during pendency of appeal.

20.1303 Rule 1303. Nonprecedential nature of Board decisions.

20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

20.1305 Rule 1305. Effective date.

Appendix A—Cross-References

Authority: 38 U.S.C. 210(c)(1), unless otherwise noted.

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 210(c)(1), 4002, 4004)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 210, 3007, 4004)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.
(Authority: 38 U.S.C. 210(c)(1), 212, 4002, 4004)

§ 20.3 Rule 3. Definitions.

As used in these rules:

(a) "Agency of original jurisdiction" means the Department of Veterans Affairs regional office, medical center, clinic, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) "Agent" means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or 20.605 of this part).

(c) "Appellant" means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 4005.

(d) "Attorney-at-law" means a member in good standing of a State bar.

(e) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) "Claim" means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) "Claimant" means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) "Hearing on appeal" means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) "Law student" means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.

(j) "Legal intern" means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(k) "Motion" means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 60 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (g), and Rule 1304, paragraph (b) (§§ 20.609(g) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(1) "Paralegal" means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(m) "Simultaneously contested claim" refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(n) "State" includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

§§ 20.4-20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8:00 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 4001(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to and benefits resulting from service-connected disability or death (38 U.S.C. Chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of in-service or service-connected deaths (38 U.S.C. 412) and certification and entitlement to death gratuity (38 U.S.C. 423).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 418).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. Chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. Chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. Chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. Chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. Chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. Chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 628).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 351).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 3102).

(19) Waiver of recovery of overpayments (38 U.S.C. 3102).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 3502-3505).

(21) Character of discharge (38 U.S.C. 3103).

(22) Determinations as to duty status (38 U.S.C. 101 (21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101 (4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 3107).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 3203).

(28) Benefits for surviving spouses and children of deceased veterans under Pub. L. 97-377, § 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Services and Research Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Services and Research Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 211(a), 4004)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 900(c) and 1101(c) (§§ 20.900(c) and 20.1101(c) of this part) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 608(b), 717(d), and 1001(c) (§§ 20.608(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2 of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, by Members of the Board who have been designated as the Chief Member of a Section of the Board or as the Acting Chief Member of a Section of the Board, and by a Member of the Board who is acting as the presiding Member of a hearing panel.

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 609(i), 610(d), 711(e), 711(f), and 1304(b) (§§ 20.606(e), 20.609(g), 20.610(d), 20.711(e), 20.711(f), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board, by Deputy Vice Chairmen of the Board, and by any Member of the Board.

(Authority: 38 U.S.C. 212(a), 4002, 4004)

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 4005)

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(Authority: 38 U.S.C. 4005)

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 1–9, Appeal to Board of Veterans Appeals, or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal must set out specific arguments relating to errors of fact or law made by the agency

of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 4005(d) (3)–(5))

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 4005(d)(3), 4008)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

(Authority: 38 U.S.C. 4005(d)(1))

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans Appeals promulgates a decision.

(Authority: 38 U.S.C. 4005(d)(3))

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 4005(b)(2))

§§ 20.205-20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed, with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 4005 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency

mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005(b)(1))

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005(b)(1), (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for

such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 4005(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 4005)

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this five-day period, Saturdays, Sundays, and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 4005)

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Martin Luther King, Jr.'s Birthday—Third Monday in January; Washington's Birthday—Third Monday in February;

Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans' Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(Authority: 38 U.S.C. 4006)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and a decision in a separate appeal perfected by the claimant will be entered by a Section of the Board which does not include Members who made the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the

Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

(Authority: 38 U.S.C. 4006)

§§ 20.402–20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 4005(b)(2), 4005A)

§ 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 4005A(a))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 4005A(b))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for

purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 4005(d)(3), 4005A(b))

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

(Authority: 38 U.S.C. 4005A(b))

§ 20.503 Rule 503. Extension of time for filing Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 4005A(b))

§ 20.504 Rule 504. Notices to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 4005A(b))

§§ 20.505-20.599 [Reserved]**Subpart G—Representation**

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 3401-3405, 4005(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative. This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 4005(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 2-22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the attorney power of attorney to represent the appellant. In lieu thereof, a signed consent by the appellant permitting access to all information in the individual's records and a signed statement by the attorney that he or she is authorized to represent the appellant, prepared on the attorney's letterhead, will be accepted as an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may

limit an attorney's right to act as representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the

appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(Authority: 38 U.S.C. 3401, 3404)

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 2-22a, Appointment of Attorney or Agent as Claimant's Representative, or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 3404 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 3404)

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has

been barred from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 2-22a, Appointment of Attorney or Agent as Claimant's Representative. This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

[Authority: 38 U.S.C. 3403]

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *When services of legal interns, law students and paralegals may be used.* Not more than two legal interns, law students or paralegals may assist an attorney-at-law in the presentation of evidence and argument in appeals before the Board of Veterans Appeals in Washington, DC, or before traveling Sections of the Board at Department of Veterans Affairs field facilities.

(b) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of appeals before traveling Sections of the Board, the consent must be presented to the presiding Member of the traveling Section as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(c) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans Appeals.

(d) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Chief of the Hearing Section and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of proceedings before traveling Sections of the Board in the field, the attorney-at-law must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board

hearing date and time not more than 10 days prior to the scheduled hearing date that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the traveling Section must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (b) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(e) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

[Authority: 38 U.S.C. 3404, 4005(b)(2)]

§ 20.607 Rule 607. Revocation of a representative's authority to act.

An appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions

of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 3401-3404)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impractical or impossible. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant

may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be made by the Chairman.

(Authority: 38 U.S.C. 3401-3404)

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations, their accredited representatives, and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the applicable Board of Veterans Appeals decision was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the applicable decision by the Board of Veterans Appeals was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(d) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for

representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted under paragraph (c) for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained; and

(7) Rates charged by other representatives for similar services.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(2) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. (Also see paragraph (h)(3) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to attorney or agent from past due benefits.* (1) Subject

to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and the attorney-at-law or agent may enter into a fee agreement providing that payment for the services of the attorney-at-law or agent will be made directly to the attorney-at-law or agent by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded;

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant; and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 3104(a) and § 3.750 *et seq.* of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective

date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law or agent represents the claimant or appellant in that phase of the claim, the attorney-at-law or agent will be paid a supplemental payment at the time that the appellant is paid retroactive benefits based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law or agent, the attorney-at-law's or agent's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney or agent must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past-due and provide that agency with a copy of the fee agreement. Payment of the attorney's or agent's share of any past-due benefits will be made at the same time that any such benefits are paid to the claimant or appellant.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g.,

a veteran's survivor or guardian), the applicable Department of Veterans Affairs file number, and the reason why the amount of the fee is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (OLC), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The moving party must mail a copy of the motion to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Such ruling will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans Appeals and/or prosecution under the provisions of 38 U.S.C. 3405.

(Authority: 38 U.S.C. 3402, 3404(c), 3405)

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs personnel or before the Board of Veterans Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits

pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The appellant or claimant, as applicable, must mail a copy of the

motion to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc.

(Authority: 38 U.S.C. 3404)

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. A representative may also continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans Appeals. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans Appeals.

(Authority: 38 U.S.C. 3402-3404)

§§ 20.612-20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on

his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(c) *Nonadversarial proceedings.* Hearings conducted by and for the Board are *ex parte* in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before a Board of Veterans Appeals hearing panel. These arguments will be transcribed by Board personnel for subsequent review by the panel members. This procedure will not be construed to satisfy an appellant's request to appear in person.

(Authority: See 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before

the Board of Veterans Appeals or before Department of Veterans Affairs field personnel acting for the Board.

(Authority: 38 U.S.C. 4002, 4004(a), 4005)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.

(a) *General.* To the extent that officials scheduling hearings for or on behalf of the Board of Veterans Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, such requests for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the requests must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a

request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for postponement has been shown is an appealable issue. In the case of a hearing conducted by the Board of Veterans Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion for a new hearing date must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more

than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the motion must be filed with: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. An adverse determination by the agency of original jurisdiction as to whether good cause for failure to appear has been shown is an appealable issue. In the case of hearings before the Board of Veterans Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4005A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans Appeals in Washington, DC, the notice of withdrawal must be sent to: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the notice must be sent to the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.703 Rule 703. When right to Travel Board hearing arises.

A Travel Board hearing is a "hearing on appeal". Accordingly, there is no right to a hearing before a traveling Section of the Board until such time as a Notice of Disagreement has been filed. Any request for such a hearing filed

with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed (with the exception of requests for such hearings in conjunction with requests for reconsideration of a prior Board decision) will be rejected.

(Authority: 38 U.S.C. 4005(a), 4010)

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Travel Board hearings are conducted during prescheduled visits to Department of Veterans Affairs facilities by traveling Sections of the Board of Veterans' Appeals. The hearings will be scheduled during such visits in the order in which requests for such hearings were received by the agency of original jurisdiction. Requests for Travel Board hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a Travel Board hearing date may be made at any time prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant

elects not to appear at the prescheduled date, the request for a Travel Board hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted to the presiding Member of the traveling Section for review when the traveling Section of the Board arrives at the agency of original jurisdiction to conduct Travel Board hearings. If the presiding Member does not concur with the determination that good cause has not been shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant fails to appear for a scheduled Travel Board hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled Travel Board hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Office of the Chairman, Special Legal Assistant (OIC), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the failure to appear has been removed. Whether good cause for such failure to appear has been established will be determined by the presiding Member of the traveling Section of the Board. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of Travel Board hearing requests.* A request for a Travel Board hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a Travel Board hearing may not be withdrawn by

an appellant's representative without the consent of the appellant. Notices of withdrawal must be forwarded to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(Authority: 38 U.S.C. 4004(a), 4010)

§ 20.705 Rule 705. Where hearings on appeal are conducted.

A hearing on appeal may be held in one of the following places at the option of the appellant:

(a) Before a Section of the Board of Veterans Appeals in Washington, DC, or

(b) Before a traveling Section of the Board of Veterans' Appeals. Such hearings are held during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings.

(c) Before appropriate personnel in the Department of Veterans Affairs facility having original jurisdiction over the claim at issue, acting as a hearing agency for the Board of Veterans' Appeals. If the appellant resides within the jurisdiction of, or in closer proximity to, a Department of Veterans Affairs facility other than the one that rendered the determination at issue, the appellant may request that the hearing be conducted at the more convenient facility. That request will be granted upon the certification of the director of the second facility that that facility has appropriate physical and personnel resources, including personnel with expertise in the issues involved, available to conduct such a hearing within a reasonable period of time. Personnel conducting such hearings as agents for the Board of Veterans' Appeals will allow the appellant and/or representative to present any argument and testimony, as well as any witnesses before the panel, subject to the exclusion of testimony, documentary evidence, and/or argument which is not relevant or material to the issues being considered or which is unduly repetitious. Rule 706 (§ 20.706 of this part) and Rules 709 through 713 (§§ 20.709 through 20.713 of this part) are applicable to this paragraph.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the

issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.707 Rule 707. When a hearing panel makes the final appellate decision.

(a) *Hearings in Washington, DC.* Hearings held before a Section of the Board of Veterans' Appeals in Washington, DC, are normally held before Members who will make the final decision on the appeal.

(b) *Hearings held before traveling Sections of the Board.* Hearings held before traveling Board Sections are normally held before Members who will make the final decision on the appeal unless an issue on appeal involves radiation, Agent Orange, or asbestos exposure; the case involves the reconsideration of a prior Board of Veterans' Appeals decision; or the hearing panel consists of fewer than three Members of the Board. Appeals involving radiation, Agent Orange, or asbestos exposure issues will be decided by Board Members specializing in those issues. Decisions in appeals involving reconsideration of a prior Board of Veterans Appeals decision on the same issue, or issues, may involve Board Members in addition to those Members making up the traveling Section. An expanded reconsideration panel considering issues involving radiation, Agent Orange, or asbestos exposure will include both the traveling Section and Board Members specializing in those issues. If a Travel Board panel is comprised of fewer than three Board Members, the Chairman may assign an additional Member, or Members, to constitute a three-Member panel which will make the final decision in Washington, DC.

(Authority: 38 U.S.C. 4002, 4004(a), 4010)

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before Members of the Board at

Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board and hearings to be held before Department of Veterans Affairs personnel acting as agents for the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.710 Rule 710. Witnesses at hearings.

(a) *General.* The testimony of witnesses, including appellants, will be heard. Testimony may include presentations by Members of the Congress or Congressional staff members appearing on an appellant's behalf.

(b) *Testimony under oath.* All testimony must be given under oath unless excused because of religious principles or other good cause. If the witness declines to take an oath, he or she must be informed that testimony will be permitted on affirmation. The witness must then be requested to make a solemn declaration as to the truth of the testimony about to be given. The witness may use such words as he or she considers binding on his or her conscience. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the

production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence can not be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of the Chairman, Special Legal Assistant (OLC), Board of Veterans Appeals, 810 Vermont Avenue NW., Washington, DC 20420. In those cases where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, the ruling on the motion will be made by the Chairman. In those cases where the appellate record has not been transferred to the Board, the ruling on the motion will be made by the Director of the Department of Veterans Affairs facility where the appellate record is located. In cases where the production of documents or other tangible evidence is sought, the granting of the motion may be conditioned upon the advancement by the appellant of the reasonable cost of producing the books, papers, documents, or other tangible evidence requested. Denial of a motion for a subpoena by a Director of a Department

of Veterans Affairs facility may be appealed to the Chairman of the Board of Veterans Appeals.

(f) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the office of the official who issued the subpoena not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the official who issued the subpoena, who will inform all interested parties of the ruling in writing. Such rulings are final and are not subject to appeal.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(Authority: 38 U.S.C. 3311, 4002(c), 4004(a))

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the Board will accord the other contesting claimants and their representatives, if any, the opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(i), the consent of

all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(ii) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 4005A)

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before Members of the Board, whether held in Washington, DC, or before a traveling Section, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member of the hearing panel will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why a transcription is necessary. They must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810

Vermont Avenue NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a traveling Section of the Board:

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans Appeals decision on the same issue; or

(iii) The traveling Section consists of fewer than three Members of the Board.

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a Notice of Disagreement will be recorded and a copy of the complete written transcript incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder as the official record of the hearing.

(c) *Copy of hearing tape recording or written transcript.* A copy of the tape recording of hearing proceedings before the Board of Veterans Appeals, or the written transcript of such proceeding when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings may be furnished without cost to the appellant or representative if a request is made at the time of or prior to the hearing; otherwise a charge may be made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may be authorized provided a consent is obtained from the appellant and made a matter of record. In no event will such additional equipment be used if it interferes with

the conduct of the hearing or the official recording apparatus. In all such situations advance arrangements must be made. In the case of hearings held before Members of the Board of Veterans Appeals in Washington, DC, arrangements must be made with the Chief of the Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before traveling Sections of the Board or before Department of Veterans Affairs personnel acting as agents for the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a))

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans Appeals or a transcript prepared by the Board of Veterans Appeals or by Department of Veterans Affairs personnel acting as agents for the Board is the only official record of a hearing on appeal. Alternate transcript versions prepared by the appellant and representative will not be accepted. An appellant or his or her representative may move for the correction of a hearing transcript, provided that the motion is filed within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon

which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before Members of the Board of Veterans Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing unless the appellant has received notice that the case has been transferred to the Board of Veterans Appeals for appellate review or unless a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question. In such cases, the motion must be filed with the Board at the address specified herein.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a hearing was held before Department of Veterans Affairs personnel acting as agents for the Board and the appellate record has been transferred to the Board of Veterans Appeals for appellate review, or in which a final Board of Veterans Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a

portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 4002, 4004(a), 4005(a), 4010)

§§ 20.718-20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 4005(d)(1))

§§ 20.801-20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause include terminal illness, extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, etc. Advancement on the docket is requested by motion. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. They must also include the name of the veteran, the name of the appellant if other than the veteran (e.g., the veteran's guardian or survivor), and the applicable Department of Veterans Affairs file number. The motion must be filed with the Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The ruling on the motion will be by the Chairman. If a motion to advance a case on the docket is denied, the appellant and his

or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(Authority: 38 U.S.C. 4007)

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Services and Research Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 3007(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 4009(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 4004(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 4009)

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of a Section of the Board before whom a case is pending.

(Authority: 38 U.S.C. 3007(a), 4004(c), 4009)

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 3007(a), 4002(c), 4004(c), 4009)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 3301(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 4009(c))

§ 20.904 Rule 904. Administrative allowance.

The Chairman or Vice Chairman, under authority delegated in §§ 2.66 and 19.13(b) of this chapter, may authorize an Administrative Allowance, following review and recommendation by a Member or Members of the Board, in adjudicative actions which are otherwise final.

(Authority: 38 U.S.C. 210(b), 212(a))

§ 20.905 Rule 905. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal

hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 4004(a))

§§ 20.906-20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned;

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant; or

(d) In accordance with Rule 1101, paragraph (c) (§ 20.1101(c) of this part), when there has been a dissenting opinion.

(Authority: 38 U.S.C. 4003, 4004)

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans Appeals decision, or decisions, involved more than one issue

on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans Appeals decision may be filed at any time. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 4003, 4008)

§ 20.1002 Rule 1002. Evidence considered on reconsideration.

(a) *Reconsideration based upon an allegation of obvious error of fact or law.* Reconsideration of an appellate decision for error is limited to review of the evidence of record at the time the decision was entered, but the Board may secure medical or legal opinions as provided by Rule 901 (§ 20.901 of this part). Apart from service department records, additional evidence submitted following the decision being reconsidered will be considered only in conjunction with a reopened claim. If the reopened claim has not been developed and certified for appellate consideration, the additional evidence will be referred to the agency of original jurisdiction unless the Board assumes jurisdiction of the reopened claim on its own motion in order to grant the benefits sought on the basis of new and material evidence.

(Authority: 38 U.S.C. 3606, 4003, 4009)

(b) *Reconsideration based upon service department records.* Additional evidence in the form of relevant service department records may be reviewed on reconsideration, inasmuch as such records are deemed to have been constructively of record at the time of the decision, or decisions, being reconsidered. If such additional evidence furnishes a basis for the grant of one or more benefits sought on appeal, error in the prior Board decision being reconsidered need not be shown with respect to such benefits.

(Authority: 38 U.S.C. 4003)

(c) *Reconsideration based upon an allegation of false or fraudulent evidence.* Reconsideration of an appellate decision based upon an allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant will be limited to a review of the evidence of record at the time the decision was entered and only such additional evidence as is required, in the Board's judgment, to establish the veracity of the evidence of record at the time the decision was entered. The reconsideration panel will not readjudicate the underlying issue, or issues.

(Authority: 38 U.S.C. 4004(a))

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant desires to appear in person.

(Authority: 38 U.S.C. 4002, 4003, 4004(a), 4005(a))

§§ 20.1004-20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

A decision of the Board of Veterans Appeals is final, with the exception of matters subject to 38 U.S.C. 223, matters covered by 38 U.S.C. 775 and 784, matters arising under 38 U.S.C. chapter 37, and matters covered by 38 U.S.C. chapter 72.

(Authority: 38 U.S.C. 211(a), 4004(a))

§ 20.1101 Rule 1101. When decisions of the Board become final.

(a) *Unanimous decisions.* Subject to a motion for reconsideration in accordance with Rule 1001 (§ 20.1001 of this part), a decision unanimously concurred in by the Members of a Section of the Board and duly promulgated is final.

(b) *Majority decisions.* Unless the Chairman of the Board orders reconsideration of the case in accordance with the provisions of paragraph (c) of this section, a decision by a majority of the Members of a Section of the Board, when duly promulgated, is final.

(c) *Dissent.* Except for cases involving reconsideration of a prior final Board of Veterans Appeals decision, any decision involving a dissenting opinion will be referred to the Chairman of the Board prior to its promulgation. If the Chairman determines that reconsideration is not warranted, the decision will be promulgated and will become final in accordance with paragraph (b) of this section. If the Chairman determines that there is a question as to whether the majority opinion may involve an obvious error of fact or law, he or she may order that the decision be reconsidered by an expanded Section of the Board in accordance with the provisions of Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part). The appellant and his or her representative, if any, will be notified that reconsideration has been ordered and provided with a copy of the decision. At the time of notification the appellant and the representative will be given a period of 60 days to present additional argument or to request a hearing on reconsideration in accordance with Rule 1003 (§ 20.1003 of this part). The decision of the majority of the Members of the expanded Section of the Board, duly promulgated, is the final decision of the Board. If the Members of the expanded Section are equally divided, the Chairman will further expand the Section until a majority opinion is obtained.

(d) *Promulgation.* Except as noted in this paragraph, a decision of the Board will be considered to have been duly promulgated as of the date shown on the face of the decision. A decision involving a dissent will not be considered to be a promulgated decision when reconsideration has been ordered by the Chairman in accordance with paragraph (c) of this section. Both the decision with the dissenting opinion and the decision on reconsideration will be considered to be promulgated as of the date shown on the face of the reconsideration decision. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(e) *Presumption of date of mailing of notice of decision.* The date of mailing of notice of the decision will be presumed to be the same as the date of promulgation for purposes of 38 U.S.C.

4066 pertaining to appeals to the Court of Veterans Appeals.

(Authority: 38 U.S.C. 4002, 4003, 4004)

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 4003)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

(Authority: 38 U.S.C. 4005)

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.C. § 4004(a))

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a new factual basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 3008, 4004)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 418 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 3504 and 3505, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 4004(b))

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 4007)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000 through 20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 4003, 4008)

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 4132.

§ 20.1300 Rule 1300. Access to Board records.

(a) *Removal of records.* No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 3301)

(b) *Release of information.* Information requested from records,

including copies of such records in the custody of the Board of Veterans' Appeals, will be furnished to the extent permitted by law and Department of Veterans Affairs regulations.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 3301)

(c) *Fees.* The fees to be charged and collected for the release of information and for any copies will be in accordance with §§ 1.526, 1.555, and 1.577 of this chapter.

(Authority: 38 U.S.C. 3302(b))

(d) *Waiver of fees.* When information is requested from records certified to and in the custody of the Board, the required fee may be waived if such information is requested in connection with the requestor's pending appeal.

(Authority: 38 U.S.C. 3302(b))

(e) *Review of records.* Information in the records may be reviewed by Board of Veterans Appeals employees who have a need to do so in the performance of their duties.

(Authority: 5 U.S.C. 552a(b)(1))

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 3301, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 4005(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each

indexed decision has a locator number assigned to it (e.g., 82-07-0001). This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I-01 1 can be obtained from Promisel and Korn, Inc., 4720 Montgomery Lane, Suite 900, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

When an appeal is pending before the Board of Veterans' Appeals at the time of the appellant's death, the Board may complete its action on the issues properly before it without application from the survivors.

(Authority: 38 U.S.C. 4004(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Previously issued Board decisions will be considered binding only with regard to the specific case decided. While prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 4004(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 60 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 60 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board during which period they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is

submitted at a hearing on appeal which was requested not more than 60 days after certification and transfer of the appellate record to the Board will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence more than 60 days following notification of certification and transfer of records.* Following the expiration of the 60-day period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the 60-day period and the discovery of evidence that was not available prior to the expiration of the 60-day period. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that

agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this rule, as well as any such evidence referred to the Board by the originating agency under § 19.112(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for

response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

§ 20.1305 Rule 1305. Effective date.

These revised rules are effective as of the date of their final publication in the *Federal Register*. In some cases, revisions to these rules are based, in

whole or in part, on provisions of Public Law 100-687 which become effective on September 1, 1989. In the event that such final publication occurs prior to September 1, 1989, existing laws and regulations (including the Rules of Practice of the Board of Veterans' Appeals in effect prior to these revisions) will govern until the effective

date of the applicable provisions of Public Law 100-687 to the extent that these revisions may be determined to be in conflict with such existing laws and regulations.

(Authority: 5 U.S.C. 552(a)(1))

Appendix A to Part 20—Cross-References

Section	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	Statement of policy.
20.100	38 CFR 20.306	Rule 306. Legal holidays.
20.200	38 CFR 20.201	Rule 201. Notice of Disagreement.
	38 CFR 20.202	Rule 202. Substantive Appeal.
	38 CFR 20.300-20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	Statement of the Case.
	38 CFR 19.31	Supplemental Statement of the Case.
20.204	38 CFR 20.1101	Rule 1101. When decisions of the Board become final.
20.301	38 CFR 20.500	Rule 500. Who can file an appeal in simultaneously contested claims.
	38 CFR 20.602	Rule 602. Representation by recognized organizations.
	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604	Rule 604. Representation by agents.
	38 CFR 20.605	Rule 605. Other persons as representative.
20.302	38 CFR 20.501	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
20.303	38 CFR 20.304	Rule 304. Filing additional evidence does not extend time limit for appeal.
	38 CFR 20.503	Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
20.305	38 CFR 20.306	Rule 306. Legal holidays.
20.400	38 CFR 19.50-19.53	See also re administrative appeals.
20.401	38 CFR 19.50-19.53	See also re administrative appeals.
	38 CFR 20.302-20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.501	38 CFR 20.305	Rule 305. Computation of time limit for filing
	38 CFR 20.306	Rule 306. Legal holidays.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.502	38 CFR 20.305	Rule 305. Computation of time limit for filing.
	38 CFR 20.306	Rule 306. Legal holidays.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.503	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.504	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.600	38 CFR 14.626 et seq.	See also re representation.
	38 CFR 20.602	Rule 602. Representation by recognized organizations.
	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604	Rule 604. Representation by agents.
	38 CFR 20.605	Rule 605. Other persons as representative.
20.602	38 CFR 14.628	Recognition of organizations.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.603	38 CFR 14.629	Requirements for accreditation of representatives, agents, and attorneys.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.606	Rule 606. Legal interns, law students and paralegals.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.604	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.605	38 CFR 14.630	Authorization for a particular claim.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.

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	38 CFR 20.609.....	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
	38 CFR 20.610.....	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.606	38 CFR 20.603.....	Rule 603. Representation by attorneys-at-law.
20.607	38 CFR 14.631(d).....	See also re revocation of powers of attorney.
20.609	38 CFR 14.629.....	Requirements for accreditation of representatives, agents, and attorneys.
	38 CFR 20.603.....	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604.....	Rule 604. Representation by agents.
	38 CFR 20.606.....	Rule 606. Legal interns, law students and paralegals.
	38 CFR 20.610.....	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
	38 CFR 20.1101.....	Rule 1101. When decisions of the Board become final.
20.610	38 CFR 20.609.....	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs personnel and before the Board of Veterans Appeals.
20.611	38 CFR 1.525(d), 14.631(e).....	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
	38 CFR 20.1101.....	Rule 1101. When decisions of the Board become final.
20.701	38 CFR 20.710.....	Rule 710. Witnesses at hearings.
20.702	38 CFR 20.704.....	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.
	38 CFR 20.713.....	Rule 713. Hearings in simultaneously contested claims.
20.703	38 CFR 20.201.....	Rule 201. Notice of Disagreement.
20.704	38 CFR 20.702.....	Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.
20.706	38 CFR 20.700(c).....	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708.....	Rule 708. Prehearing conference.
	38 CFR 20.709.....	Rule 709. Procurement of additional evidence following a hearing.
20.707	38 CFR 19.11.....	Reconsideration panel.
	38 CFR 20.1101.....	Rule 1101. When decisions of the Board become final.
20.708	38 CFR 20.606(d).....	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37.....	Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
	38 CFR 20.1304.....	Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.
20.710	38 CFR 20.711.....	Rule 711. Subpoenas.
20.711	38 CFR 2.1.....	See for further information on subpoenas, including allowable fees and mileage and action to be taken in the event of noncompliance.
20.713	38 CFR 20.702.....	Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans Appeals at field facilities.
	38 CFR 20.704.....	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans Appeals at Department of Veterans Affairs facilities.
20.715	38 CFR 20.706.....	Rule 706. Functions of the presiding Member.
20.717	38 CFR 20.1101(d).....	Promulgation.
20.800	38 CFR 20.304.....	Rule 304. Filing additional evidence does not extend time limit for appeal.
	38 CFR 20.709.....	Rule 709. Procurement of additional evidence following a hearing.
	38 CFR 20.1304.....	Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.
20.901	38 CFR 14.507.....	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305.....	Rule 305. Computation of time limit for filing.
	38 CFR 20.306.....	Rule 306. Legal holidays.
20.1002	38 CFR 20.1000.....	Rule 1000. When reconsideration is accorded.
	38 CFR 19.7(b), 20.905(b).....	See re disposition of issues when it is determined on reconsideration that an allowance of benefits was influenced by false or fraudulent evidence.
	38 CFR 20.1105.....	Rule 1105. New claim after appellate decision.
20.1003	38 CFR 20.700(b).....	See re submission of written briefs and of oral argument on audio cassette.
20.1100	38 CFR 20.1000- 20.1003.....	See re reconsideration of Board of Veterans Appeals decisions.
	38 CFR 20.1101.....	Rule 1101. When decisions of the Board become final.
20.1101	38 CFR 19.3.....	Appointment, assignment, and rotation of Members.
	38 CFR 19.6.....	Composition of Board of Veterans Appeals hearing panels.
	38 CFR 20.705.....	Rule 705. Where hearings on appeal are conducted.
20.1105	38 CFR 3.158.....	New and material evidence.
	38 CFR 3.160(e).....	Reopened claim.
	38 CFR 20.1304(b)(1).....	See re request for a personal hearing or submission of additional evidence more than 60 days after a case has been certified to the Board of Veterans Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2).....	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 418.
20.1300	38 CFR 1.500-1.527.....	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550-1.559.....	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575-1.584.....	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301.....	Rule 1301. Disclosure of information.
20.1301	38 CFR 1.577.....	Access to records.
20.1302	38 CFR 20.611.....	Rule 611. Continuation of representation following death of a claimant or appellant.
20.1304	38 CFR 3.103(c).....	See also re hearings.
20.700- 20.717	38 CFR 3.156.....	New and material evidence.
	38 CFR 3.160(e).....	Reopened claim.
	38 CFR 20.305.....	Rule 305. Computation of time limit for filing.
	38 CFR 20.306.....	Rule 306. Legal holidays.